STATE OF ILLINOIS

ILLINOIS COMMERCE COMMISSION

Commonwealth Edison Company	)	
	)	
Petition for approval of an Alternative Rate Regulation Plan pursuant to Section 9-244 of the Public Utilities Act	)))	Docket No. 10-0527

INITIAL BRIEF OF THE STAFF OF THE ILLINOIS COMMERCE COMMISSION

February 17, 2011

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NOW COMES Staff of the Illinois Commerce Commission ("Staff"), by and through its undersigned counsel, pursuant to Section 200.800 of the Illinois Commerce Commission's Rules of Practice (83 Ill. Adm. Code 200.800), and respectfully submits its Initial Brief in the instant proceeding.

I. INTRODUCTION / RELIEF REQUESTED

On August 31, 2010, Commonwealth Edison Company ("ComEd" or "Company") filed with the Illinois Commerce Commission ("Commission") a Verified Petition ("Petition") for approval of an alternative regulation ("Alt. Reg.") plan under Section 9-244 of the Illinois Public Utilities Act ("PUA" or "Act") (220 ILCS 5/9-244).

In its Petition, ComEd asked to place into effect a tariff to implement its proposed alternative regulation plan, Rate ACEP – Accelerated Customer Enhancements Pilot ("Rate ACEP"). In its Petition, ComEd has proposed several different projects, including an accelerated investment in urban underground facilities, an electric vehicle pilot, and a low-income customer assistance program. Additionally, the Company has provided for a mechanism for implementation of smart technology investments. (see Petition, generally)

The Commission is an administrative agency whose power is derived from the legislature. (Union Electric Co. v. Illinois Commerce Commission, 77 Ill. 2d 364 (1979)) Any action or decision taken by an administrative agency in excess of or contrary to its authority is void. (Alvarado v. Industrial Commission, 216 Ill.2d 547, 553-54 (2005)) ComEd is asking the Commission to authorize a process, identified as Rate ACEP, through which it will be permitted to include in its charges to customers the costs of proposed investments and activities, including a rate of return of and on the proposed investments (ComEd Ex. 1.0 Revised, p. 21), following presentation to and approval by the Commission of proposed budgets for those programs and investments. ComEd has made it clear that the investments and activities proposed in this docket would likely never meet any traditional test for cost recovery. (ComEd Ex. 8.0, p. 2) ComEd witness Hemphill identifies this situation as a "dilemma" for ComEd. (ComEd Ex. 8, p. 13) Staff's position is that this is not a dilemma. Rather, it is a perfectly logical consequence of the General Assembly's delegation of regulatory authority to the Commission designed to preclude utility recovery from its ratepayers of the costs of investments and activities that do not meet the cost recovery standards in the Act. That is the way the law is supposed to work.

Section 9-211 of the Act provides clearly and explicitly that:

> [t]he Commission, in any determination of rates or charges, shall include in a utility's rate base only the value of such investment which is both prudently incurred and used and useful in providing service to public utility customers.(emphasis added)

To enlarge upon Section 9-211's clear limitations regarding rate-basing, Section 9-201 provides as to customer rates, obviously also including costs for other than rate-based investments, that:

> [a]ll rates or other charges made, demanded or received by any product or commodity furnished to or to be furnished or for any service rendered or to be rendered shall be just and reasonable.

Further, Section 8-406(b) of the Act provides that:

> [w]henever after a hearing the Commission determines that any new construction or the transaction of any business by a public utility will promote the public convenience and is necessary thereto, it shall have the power to issue certificates of public convenience and necessity.

Section 8-406(b) also provides that:

> [t]he Commission shall determine that proposed construction will promote the public convenience and necessity only if the utility demonstrates: (1) that the proposed construction is necessary to provide adequate, reliable, and efficient service to its customers and is the least-cost means of satisfying the service needs of its customers. . .

It is Staff's position that what ComEd proposes in this docket, Rate ACEP and the process for the Commission to authorize Rate ACEP, is beyond the Commission's authority. ComEd contends that a Section 8-406 petition would be useless for the investments it proposes, i.e., the Urban Underground Facility Reinvestment ("UUFR") Project, the Electric Vehicle ("EV") acquisitions and the unspecified future Distribution Automation ("DA") investments (ComEd Ex 6.0, p. 24); ComEd contends that this is precisely because those investments are unnecessary. (Id.) Since ComEd contends that the proposed Rate ACEP investments and activities are unnecessary, then it is also implicitly recognizing that those investments and activities are also not prudent.

ComEd claims in its testimony that the standards which the Commission must follow to approve an alternative regulation plan and rates to be charged under that alternative regulation plan are those standards contained in Section 9-244 of the Act only. (ComEd Ex. 8.0, p. 132) However, a careful reading of the language of Section

9-244 indicates that it is not so broad as to completely abrogate standards elsewhere in the Act. Section 9-244(a) provides that:

> [n[otwithstanding any of the **ratemaking** provisions of this Article IX or other Sections of this Act, or the Commission's rules **that are deemed to require rate of return regulation**, . . . the Commission, upon petition by an electric or gas public utility . . . may authorize for some or all of the regulated services of that utility, the implementation of one or more programs consisting of (i) alternatives to rate of return regulation, including but not limited to earnings sharing, rate moratoria, price caps or flexible rate options, or (ii) other regulatory mechanisms that reward or penalize the utility through rates based on utility performance. (emphasis added)

That language does not mean that the ratemaking provisions in Article IX, or any other section of the Act or the Commission's rules, do not apply to Section 9-244 petitions but rather that <u>the ratemaking provisions</u> in Article IX, the Act or the Commission rules that would require rate of return regulation, do not prohibit a utility from filing a Section 9-244 petition to recover rates outside of rate of return regulation. While Section 9-244 gives the Commission authority to approve utility rates other than through traditional rate of return regulation, Section 9-244 does nothing to expand the authority delegated to the Commission by the General Assembly to allow in utility rates the costs of programs that are not necessary for a public utility to provide adequate, reliable, efficient and least-cost public utility service. The standards identified in Section 9-244(b) which the Commission must find to have been met to permit approval of a utility's Section 9-244 proposal apply to the Section 9-244 proposal <u>itself</u>, not underlying utility investments or activities. Section 9-244 uses the terms "program" or "programs" to identify the utility-proposed alternatives to rate of return regulation. Section 9-244(b) begins with language identifying when the Commission is obliged to approve a utility's Section 9-244 proposal: "(b) The Commission shall approve the <u>program</u> if it finds, based on the record. . . " (emphasis added) That language is entirely consistent with a conclusion that Section 9-244 standards apply only to a utility-proposed Section 9-244 ratemaking program, not to the utility investments and activities to which that program might apply. ComEd witness Hemphill clearly recognizes this dichotomy when he states that "the nature of ratemaking does not affect the question of our obligation to serve." (ComEd Ex. 8.0, pp. 15-16)

ComEd claims that its Section 9-244 proposal is "highly beneficial" if it results in "more expeditious implementation of programs that can provide significant benefits to Illinois residents and businesses." (ComEd Ex. 1.0. p. 25) ComEd also claims that Section 9-244 establishes standards for Commission approval of utility investments or activities associated with or underlying a Section 9-244 cost recovery proposal. When asked in his testimony whether he would "agree with Staff witness Stoller's argument that projects under Section 9-244 must meet the Section 8-406 requirements of public convenience and necessity and the Section 9-211 standards of prudence and used and useful," Mr. Hemphill answered "No." (ComEd Ex. 8.0, p. 20) ComEd is attempting to convince the Commission that its Section 9-244 proposal can be considered a positive attribute of the ComEd investment and activity costs which ComEd is proposing to recover from ratepayers. That precept is quite clearly stated in ComEd's testimony when it claims that Rate ACEP was designed to address the question of "what regulatory mechanism provides a reasonable opportunity for ComEd to recover the cost of beneficial investments and expenditures that are not necessary for the fulfillment of ComEd's obligation to provide adequate and reliable service." (ComEd Ex. 8.0, p. 2)

Staff's position is that the Commission has been delegated authority by the General Assembly to determine what public utility programs and investments are indeed necessary to provide adequate, reliable, efficient and least-cost public utility service.

While Staff is not aware that the Commission has ever identified a particular methodology for determining whether an investment is “prudent” or “necessary,” it is Staff’s position that the Commission could, under appropriate circumstances adopt for ratebasing, a test that embodied, in one way or another, a “ratepayer benefits” or a “net benefits” test of some kind.

It is unclear to Staff and in this evidentiary record ComEd’s position about the cost-benefit concept in the context of a Section 9-244 program. ComEd witness McMahan was asked whether the term “cost-beneficial” (ComEd Ex. 2.0, p. 7) means that expected benefits would exceed expected costs. Mr. McMahan stated that no direct cost-benefit analysis of potential programs is performed (Tr., January 25, 2011, p. 180), although he later explained that ComEd compares the cost of installing a technology to the number of avoided customer interruptions. (Id., pp. 190-191) However, a somewhat different view was offered by ComEd witness Hemphill, who was asked about whether the very similar-sounding term “net benefits” used in his direct testimony means the expected benefits of a program would be greater than expected costs. He agreed that it would. (Tr., January 26, 2011 pp. 430-431)

Staff’s position is that the public would not be served by programs that cannot be demonstrated to provide economic value to ComEd customers and other members of society. Whether one uses the term cost-beneficial -- a term that appears in Mr. McMahan’s testimony and in ComEd’s Petition[1] (Petition, p. 6) – or “net benefits,” a term that appears in Dr. Hemphill’s testimony (ComEd Ex. 1.0 Revised, pp. 25, 30 and 31) --

[1] The Petition states that “Smart technology development would be funded under the alternative regulation plan upon subsequent Commission approval of AMI or DA projects that are found by the Commission to be cost-beneficial.”

the Commission should not approve a Section 9-244 program if the Commission does not believe the expected benefits of the program would exceed the expected costs of the program. ComEd agrees. (Tr., January 26, 2011, p. 431) Staff position is also that, as explained above, an analysis of whether a Section 9-244 ratemaking "program" would provide either "benefits" or "net benefits" should not include analysis of any utility investment or activity "underlying" a Section 9-244 program: utility investments, for the Commission to approve them, need to stand on their own merits under traditional **ratebasing** standards.

Staff also agrees with Dr. Hemphill that it is the responsibility of the Company to avoid proposing programs that the Commission does not believe have net benefits. (Id., p. 431) A restriction on proposals that, at least from the Company's view, are net beneficial would result in a more efficient Commission review process as the Commission would not spend resources reviewing programs that the Company could not support from an economic perspective. Staff also agrees with Dr. Hemphill that it is the responsibility of the Company to provide evidence that a program would pass a net benefits test. (Id.) However, Dr. Hemphill acknowledged that, at least in the case of one of the programs that ComEd is proposing in this proceeding, the low-income program, ComEd has provided no evidence in the proceeding to support that contention. (Id., p. 433)

While there appears to be agreement that programs should pass a net benefits test (or be cost-beneficial), there is no written testimony specifying just <u>how</u> a cost-benefit analysis should be conducted. Under questioning from ComEd counsel, Dr. Hemphill explained his view that a net benefits analysis could include non-monetary benefits (e.g., reliability or environmental benefits) in addition to monetized benefits, (Tr., January 27, 2011, p. 624), a point he reiterated under questioning from Staff counsel. (Id., p. 632)

Staff is skeptical of Dr. Hemphil's position that a net benefits analysis – that is, a comparison of expected costs and benefits – should or even could include non-monetary (i.e., non-quantifiable) elements. Staff does not disagree, however, that a proper net benefits analysis could include such factors as environmental or reliability benefits, but only to the extent that such factors could be added to the other elements in the cost-benefit calculation.

Regardless of whether a net benefits test is used to determine whether an investment is prudent or necessary, it is Staff's position that the Commission does not have authority to approve a utility rate recovery proposal, even if the rate recovery method is proposed under Section 9-244 and meets the Section 9-244(b) standards, for underlying investments and activities that the utility itself has contended are unnecessary, or would be imprudent if undertaken. Here, as noted, ComEd has clearly indicated that the investments and activities it is proposing "are not necessary to satisfy the minimum required levels of service" (ComEd Ex. 6.0., p. 20) and equates that shortcoming of the investments and activities with the reality that, under those circumstances, "ComEd cannot rely on recovering its prudent and reasonable costs." (Id.) In Staff's view, that is an entirely predictable and appropriate eventuality. Unless and until ComEd secures Commission approval that its investments and activities are prudent, necessary and reasonable in cost, under whatever test for those standards the Commission chooses to apply, ComEd should not be authorized to recover costs of those investments and activities from its ratepayers.

In summary, the Commission is, in Staff's view, delegated authority by the General Assembly in the Act to identify whatever methodology it might wish to apply to determine whether a proposed utility investment or activity was or might be necessary, prudent or required to provide adequate, efficient, reliable and least-cost public service. However, a utility's proposal to recover from its ratepayers the costs of that project or investment under Section 9-244 would not alter or modify traditional standards the Commission must use to identify costs the utility could recover from ratepayers. Section 9-244 authorizes the Commission to determine how a utility should be permitted to recover investment and activity costs from ratepayers, but not as a substitute for which investments and activity costs a utility might be able to recover from ratepayers. Section 9-244 expands the Commission's authority to determine only the method through which those costs are recoverable.

ComEd argues that traditional rate of return regulation ("TR") has several shortcomings that Rate ACEP avoids. In particular, ComEd witness Dr. Hemphill asserts that 1) TR does not consider the "life cycle of a project"; 2) TR is "focused on costs already spent"; 3) in TR, "individual programs get 'lost'"; and 4) adversarial litigation is bad. (ComEd Ex. 1.0 Revised, pp. 8-9) Staff disputes that these assertions are valid criticisms, and notes that, to the contrary, these aspects of TR help protect against ratepayers paying more than prudently incurred costs. (Staff Ex. 1.0R, pp. 7-9) Further, Dr. Hemphill's characterizations of TR do not demonstrate that a utility under TR is less efficient than it would be if costs were recovered under Rate ACEP. TR has governed utility cost recovery in both Illinois and other states for decades. These utilities generally provide adequate, efficient and sufficient service at reasonable rates and have generally received compensatory revenues for their provision of service. (Staff

Ex. 1.0R, p. 7) ComEd argues that its service levels are adequate. (ComEd Ex. 6.0, p. 6)

Dr. Hemphill also asserts that TR is fraught with "the critical problem of regulatory uncertainty." He argues that ComEd is unable to fund the projects proposed

> without regulatory guidance and a means to recover our costs – provided we act efficiently. Alternative regulation provides a balanced answer to that dilemma. It does not shift risk to customers – ComEd retains implementation and operational risk and the incentive features actually make ComEd's responsibility for its own actions more consequential. But alternative regulation does provide a way for ComEd to act with guidance, at a lower regulatory risk, which benefits customers. (ComEd Ex. 1.0, p. 9)

Staff responded that all of these assertions miss the mark. ComEd states that Rate ACEP is its vehicle to recover costs for projects that are not necessary but have net benefits. (ComEd Ex. 9.0, p. 16; ComEd Ex. 6.0, p. 8) ComEd does not explain why ratepayers should fund these projects when they are not necessary for public utility service. (ComEd Ex. 6.0, p. 6) As noted above, Staff does not agree that ratepayers should fund projects that are not necessary.

Rate ACEP would shift risk to ratepayers. Because ComEd begins recovering its costs almost immediately after spending, there is no risk that its capital costs up to the budget can be declared imprudent. (Tr., January 27, 2011, p. 631) The remaining risk to its cost recovery is only for expenditures exceeding the budget; only <u>after</u> the project is completed does ComEd have to refund above-budget costs. This is true regardless of whether the project is completed on time or how well it is completed. The Company faces a risk in the case of a project that exceeds its budget that it might not recover all capital costs, which is the same risk under TR. Moreover, even if expenditures for a project exceed its budget, capital costs over the Rate ACEP budget could still be recovered in a subsequent rate case. On the other hand, under TR, the utility does not receive a return of and on the cost of a project until it is included in rate base in a rate case under TR. Thus, Staff agrees that Rate ACEP reduces the Company's risk relative to TR. However, Staff disagrees with Dr. Hemphill's conclusion that the lower regulatory risk benefits customers, since the reduced risk to ComEd's shareholders from Rate ACEP results from a shift of risk onto ComEd's ratepayers. (Staff Ex. 1.0R, pp. 10-12)

Dr. Hemphill also argues that Section 9-244 does not mandate that ComEd must show that it 'needs' to have a mechanism to implement Alternative Regulation ("AR"). Instead, ComEd asserts that Section 9-244 permits ComEd to propose AR if it can show that its proposal meets the eight standards in Section 9-244(b), which do not require that it show that these programs cannot be undertaken under TR. (ComEd Ex. 6.0, p. 19)

Staff did not argue that Section 9-244 <u>mandates</u> that ComEd prove that it cannot accomplish its program under TR. Dr. Rearden noted, however, that Section 9-244(b)(1) requires a direct comparison between the rates that customers pay under TR and AR, when it states that the AR proposal must show that "…the program is likely to result in rates lower than otherwise would have been in effect under traditional rate of return regulation for the services covered by the program." Thus, it is entirely pertinent to the decision the Commission must make to compare outcomes between Rate ACEP and TR. (Staff Ex. 8.0, pp. 8-9)

II. PROCEDURAL HISTORY

The following Staff Witnesses have submitted testimony in this case: David Rearden (Staff Exs. 1.0R and 8.0), Jennifer Hinman (Staff Exs. 2.0 and 9.0 Rev.), Eric Schlaf (Staff Exs. 3.0 and 10.0), John Stutsman (Staff Exs. 4.0 and 11.0), Dianna Hathhorn (Staff Exs. 5.0 and 12.0), Cheri Harden (Staff Ex. 6.0), and Harry Stoller (Staff Exs. 7.0 and 13.0).

The following parties have submitted testimony in this case: People of the State of Illinois ("AG"), the Citizens Utility Board ("CUB"); Illinois Power Agency; Illinois Industrial Energy Consumers ("IIEC"); the Natural Resources Defense Council ("NRDC"); the Chicago Transit Authority ("CTA"); AARP; the Northeast Illinois Regional Commuter Railroad Corporation d/b/a Metra ("Metra"); the City of Chicago; Environmental Law & Policy Center ("ELPC"); Illinois Competitive Energy Association; the Commercial Group ("CG"); Nucor Steel Kankakee, Inc.; and Building Owners and Managers Association of Chicago ("BOMA").

An evidentiary hearing was held in this matter in Chicago on January 25-27, 2011. The record was marked Heard and Taken on January 27, 2011.

Pursuant to Section 9-244(b) of the PUA, the Commission must make specific findings in order to approve ComEd's Alt. Reg. proposal. These specific findings will be addressed further below. It must also issue an order approving or denying the proposal no later than 270 days from August 31, 2010.

III. RATE ACEP PROPOSAL

A. Proposed Rate ACEP Mechanism

1. Proposed Budget Baseline

Rate ACEP first establishes a capital investments budget and budget for O&M expenses for each project. This is why ComEd characterizes it as "budget-based alternative regulation." (ComEd Ex. 6.0, pp. 11-12) The proposed Rate ACEP allows ComEd to recover costs of projects before they are completed and included in base rates with the budgets intended to restrict ComEd's ability to recover costs from ratepayers before the project is completed. (ComEd Ex. 1.0 Revised, pp. 7-8)

However, there are a number of reasons why Rate ACEP is not better than TR. Most importantly, Dr. Rearden points out that ComEd has a strong incentive to increase the budget for projects by over-estimating the market price for inputs in the budget. (Staff Ex. 1.0R, pp. 17-18) The higher the budget, the better it is for ComEd, since a higher budget never reduces ComEd's cost recovery and could raise it. (Staff Ex. 8.0, p. 9) Further, ComEd only earns revenues less than its costs when it expends more than 105% of the budget, but ComEd shares in 'savings' when its expenditures are less than 95% of the budget. (Staff Ex. 1.0R, p. 19) Moreover, ComEd reserves the right to ask the Commission to recover any costs above its budgets in a rate case after the project is complete. (Staff Ex. 8.0, p. 15) Staff does not believe that it can effectively monitor the budget-making process in Rate ACEP, since ComEd has much more information about its operations and costs than does Staff or any other possible party. (Staff Ex. 1.0R, p. 19; Staff Ex. 8.0, p. 12)

2. Recovery of O&M Expenses

Staff does not believe that limiting recovery of O&M expenses to 95% of estimated costs sufficiently protects ratepayers against paying excessive costs. As noted above, Dr. Rearden points out that ComEd has an incentive to overestimate the budget, and Staff and any other possible party possess less information concerning ComEd's costs and operations than ComEd does. Therefore the Commission is not likely to be able to effectively verify the budget. That implies that the 95% limit provides only illusory protection against overcharges to ratepayers. Finally, Rate ACEP preserves ComEd's ability to seek any O&M costs not recovered under Rate ACEP in a rate case. (Staff Ex. 8.0, p. 14)

3. Recovery of Capital Investments

The incentive scheme for capital investment cost recovery is flawed. The risk that ComEd under-recovers its investment costs is not symmetric with the possibility that it generates 'savings' (i.e., ComEd incurs costs below 95% of the budget). Thus, the consequences that <u>ComEd</u> would face for exceeding the budget can be, from ComEd's point of view, remedied, but <u>ratepayers</u> have much less protection in case the project's cost is over-estimated.

There are several incentives inherent in Rate ACEP that increase cost recovery from ratepayers. First, ComEd can seek to recover overruns in rate cases, so even if ComEd spends more than it can initially recover, it can apply to recapture the shortfall in a rate case. Second, as discussed above, it has an incentive to make the budget larger. A larger budget means ComEd is less likely to exceed it and more likely to come in under budget, thus granting ComEd a share of the dubiously estimated ‘savings.’ (Staff Ex. 8.0, p. 16)

Third, ComEd has an incentive to declare a project complete when it nears the 95% and 105% of the budget, even if it is not finished. While ComEd shareholders share in ‘savings’ for costs below 95% of the budget, there is a deadband from 95% to 105% of the budget, in which ComEd is entitled to recover exactly what it spends. Above the deadband, ComEd must refund the difference between actual expenditures and the budget. If ComEd’s expenditures are close to 105%, it should declare the project complete, to avoid refunds. On the other hand, when its expenditures are below 95% of the budget, ComEd has an incentive to declare that the project is complete in order to generate returns above cost from the sharing mechanism. (Staff Ex. 1.0R, p. 23; Staff Ex. 8.0, p. 16)

With respect to this latter point, Dr. Hemphill argues that the Commission makes the final determination. (ComEd Ex. 6.0, pp. 15-16) However, some projects, like UUFR, are open-ended, and it is difficult to identify when they would be “complete.” For example, the Commission’s scope for action is unclear if ComEd stops a project and declares it complete but the Commission disagrees. The Commission may find it difficult to evaluate the project and determine the costs that ComEd should or should not have recovered. (Staff Ex. 8.0, p. 16)

4. Treatment of Costs Under/Over Budget

B. Description of Proposed Projects

1. Urban Underground Facilities Reinvestment (“UUFR”)

ComEd Proposal

UUFR Project

The UUFR project was introduced in this case by Dr. Hemphill and described in detail by Ms. Blaise. Dr. Hemphill noted that the proposal would result in real safety and quantifiable reliability benefits to customers served through urban underground facilities.[2] Ms. Blaise described four main benefits of the UUFR project in her testimony: 1) significantly improved reliability and performance of the mainline underground system, 2) improved environmental and occupational safety, 3) reduction in long-term costs, and 4) meaningful job creation.[3]

It is clear ComEd believes the UUFR is a worthy project for improving the reliability of ComEd's customers, yet ComEd stated that the UUFR project is a feature only of ComEd's Alt. Reg. proposal.[4] If ComEd does not receive approval of the Alt. Reg. proposal, ComEd would continue only the current mainline feeder maintenance program. Furthermore, ComEd conditionally linked the project's implementation to the outcome of the rate case, even if the Commission approved the alternative regulation proposal without limitation.[5]

Staff Review and Staff Proposal

Staff is concerned that ComEd is being irresponsible in denying customers the benefits of the UUFR project when it conditions the implementation of the UUFR project on the Commission's adoption of ComEd's Alt. Reg. proposal and on a favorable outcome (by ComEd's perspective) of the rate case.[6] In short, it would appear ComEd

[2] ComEd Ex. 1.0, p. 30
[3] ComEd Ex. 4.0, pp. 12-14
[4] Staff Ex. 4.0, Attachment B, ComEd's response to Staff data request JVS_1.04 in Docket No. 10-0467
[5] ComEd Ex. 1.0, p. 10
[6] Staff Ex. 4.0, p. 4

is using this necessary[7] project to leverage the adoption of its Alt. Reg. proposal and the current rate case.

ComEd's Current Underground Maintenance Program

The current underground maintenance program is a "reactive approach" that "spends and invests as little as possible" and, based on this approach, refurbishment of all manholes could take up to 100 years to complete, and replacement of cable will only occur as failure indicators appear.[8] It is a bare bones reactive approach that, since 2006, is losing ground with a growing backlog[9] in "joint issues" and "manholes requiring repair." Manholes and related cables are refurbished opportunistically, as failures occur or new business or capacity expansion projects require; ComEd's approach is not in any way an example of what is often referred to as "good utility practice."[10] The current reactive program approach is inconsistent with ComEd's own commitments in the Blueprint for Change Investigation Report ("Blueprint") that found too much of ComEd's maintenance work was reactive rather than preventive, driven by actual or pending equipment failures as well as ComEd's commitments to recommendations in the Liberty Consulting Group's ("Liberty") first report on the Investigation of Commonwealth Edison's Transmission and Distribution Systems.[11]

ComEd's UUFR Project

Staff reviewed the UUFR project and determined that it was necessary to meet the requirements of Section 8-401 and that it provides appropriate consideration to costs of service interruptions while protecting the public health, safety and welfare under

[7] Staff Group Cross Ex. 1, pp. 8, 12, 16, 18, 20-21, 25, 41-45
[8] ComEd Ex. 4.0, pp. 7, 11
[9] The growing maintenance backlog is inconsistent with ComEd commitments – See Staff Ex. 11.0, Attachment N, pp. 51 & 54-56; Staff Group Cross Ex. 1, p. 44
[10] Staff Ex. 11.0, pp. 12-14; Attachment L, Attachment M, p. A.11, Attachment N, p. 59
[11] Staff Ex. 11.0, Attachment M, p. A. 11, Attachment N, p. 59

Section 1-102 of the PUA. Additionally, the UUFR project will have a long term positive impact on utility earnings. Staff recommends that ComEd be ordered by the Commission to undertake the UUFR project irrespective of whether ComEd receives approval of and moves forward with its Alt. Reg. proposal because Staff believes the UUFR program would be prudent, and if the reliability work is completed, it should be used and useful. Simply put, Staff believes the work should be done and that reasonable costs of the UUFR project are recoverable by ComEd.

The UUFR Project is Necessary

Staff was influenced by ComEd's description of the "leading cause" of underground mainline feeder cable system failures that the UUFR project has been designed to proactively address. Staff found convincing the many benefits the UUFR project provided in reliability[12], safety, environmental and operational efficiencies derived from implementation of the UUFR project. By addressing "leading causes" of underground system failures, the UUFR project will be addressing factors that would tend to cause grouping or pockets of excessive unreliability. It will help ComEd fine tune reliability work targeting a root cause of "unreliability pockets"[13] that are directly derived from those "leading causes." Staff determined that UUFR supports the statutory goals in Section 8-401of adequacy, reliability, efficiency, environmental safety and least-cost; Section 1-102(d)(i) objectives of protecting public health, safety, and welfare; Section 1-102(d)(vi) long-term utility earnings; and is consistent with good utility practices as well as ComEd's past commitments to the Commission and to ComEd's customers.

[12] ComEd Ex. 4.0, pp. 7-8, 12-14; Staff Ex. 4.0, pp. 5-6; Staff Group Cross Ex. 1, pp. 2, 6, 8, 12, 16, 18, 20-21, 23, 25, 31, 33, 41-45
[13] Staff Ex. 11.0, pp. 5-8, 13-14; Staff Group Cross Ex. 1, pp. 20-21, 41-45

The UUFR project has definite reliability benefits for customers, which ComEd highlighted[14]. ComEd calculated an annual expectation of 38,363 estimated incremental avoided customer interruptions for the UUFR project. This equates to a SAIFI[15] reduction of approximately 0.01[16] or about 10% of the $53.5 to $102.3 million annual financial benefits flowing to customers for every 0.1 reduction of SAIFI. ComEd notes that by "striving to eliminate interruptions whenever we practically can is not only a matter of convenience for customers, but benefits them financially." [17] Staff finds this persuasively supports the statutory goals in Sections 8-401, 1-102(i) and Section 1-102(vi) long-term utility earnings (through reduced restoration costs and operational savings) and is consistent with good utility practices. Additionally, this is consistent with Section 1-102(c) because it gives appropriate consideration to the costs likely to be incurred as a result of service interruptions as addressed in Illinois Adm. Code Part 411 Section 411.10(a)(2).

Staff also evaluated the UUFR project by reviewing the Company's calculated Cost per Avoided Customer Interruption ("CPACI") for the project. When it was compared to several existing programs, the CPACI for the UUFR project is higher than CPACI's calculated for the existing mainline underground cable testing and replacement program, which Staff has noted was not consistent with "good utility practice" or the requirements of Section 8-401[18]. The CPACI of the UUFR project is lower than the CPACI's calculated for the existing vegetation management program and the existing

[14] ComEd Ex. 1.0; p. 13
[15] System Average Interruption Frequency Index – the index is defined in Staff Ex. 11.0, p. 6, footnote 10
[16] Staff Ex. 4.0, pp. 3, 5-6, Attachment A, Attachment C, Attachment D
[17] Staff Ex. 4.0, p. 5 quoting from Docket 10-0467, ComEd Ex. 8.0, p. 17
[18] Tr., January 19, 2011, pp. 323-325; Staff Group Cross Ex. 1, pp. 20-21

underground residential design cable replacement/injection program.[19] Staff finds it persuasive that the CPACI of the UUFR project lies within the range of currently implemented reliability projects at ComEd. Staff finds that this supports the statutory goals in Section 8-401.

It is maintenance programs like the UUFR project that, in the aggregate, make great strides in improving and maintaining the reliability of the power distribution system and these programs should be encouraged whenever possible.

Staff's Recommendation

In direct testimony, Staff witness Stutsman recommended that:

> The Commission order ComEd to undertake the UUFR project irrespective of whether ComEd receives approval of its alternative regulation proposal and moves forward with its alternative regulation proposal. Additionally, I recommend that ComEd be ordered to provide status reports to Staff, every 6 months and upon completion, on the progress being made on the UUFR project until it is completed. I envision the status reports should be minimal additional work and could be little more than copies of internal high level summaries[20] that ComEd management would be using to track progress on this project.[21]

In rebuttal testimony[22] and data request responses[23], ComEd witnesses opined that if the Commission required the UUFR project to be implemented it would "necessitate significant cutbacks" or displacement of other reliability projects. This argument has no merit. The UUFR project represents a modest[24] part of ComEd's total rate base and a fraction of ComEd's approximately $900 million annual additions to rate base. In addition, if ComEd were to hypothetically reduce a program with a higher

[19] Staff Ex. 11.0, pp. 8-9, Attachment E
[20] Tracking factors such as number of inspections completed, cable segments tested, cable segments replaced, and manholes repaired or replaced versus plan.
[21] Staff Ex. 4.0, p. 6
[22] ComEd Ex. 6.0, p. 30; lines 646-648, 652-655
[23] Staff Ex. 11.0, Attachment J
[24] IIEC Ex. 1.0, pp. 7-8; Staff Group Cross Ex. 1, p. 39; Staff Ex. 11.0, pp. 14-16

CPACI[25] than the UUFR project such as the tree trimming program, ComEd would be in violation of National Electric Safety Code Rule 218(A)(1) as adopted from the 2002 NESC by the Commission in Illinois Administrative Code 305.20 on June 15, 2003. In order to track ComEd's actions in response to a Commission order to implement the UUFR project, in rebuttal Staff witness Stutsman added to his recommendation that the Commission order ComEd to report the details of all programs and projects that are displaced or cutback because of ComEd's implementation of the UUFR project.[26] Staff believes this additional information would alert the Commission, should the need arise, if it is necessary to initiate future actions or investigations into ComEd's activities.

ComEd's Criticisms of Staff's Proposal

ComEd Argues UUFR Project Exceeds Minimum Service Requirements or Standards

ComEd's rebuttal testimony contended that the UUFR project was not necessary because it improved reliability beyond the levels that are required by the applicable laws, regulations, and regulatory decisions.[27] When Staff asked ComEd witnesses what laws or minimum reliability standards the UUFR project specifically exceeded, ComEd's witnesses apparently had no idea except to point to the reporting requirements in Part 411 and the PUA in general as well as Ms. Blaise's testimony in the Alt. Reg. docket that described the benefits of the UUFR project. ComEd witness Hemphill finally admitted that reliability requirements are, for the most part, qualitative not quantitative and that, in his opinion, the current program met the requirements of Section 8-401 but that it was his "understanding and belief that the UUFR project is not necessary to meet

[25] Staff Group Cross Ex. 1, pp. 35, 37
[26] Staff Ex. 11.0, p. 16
[27] ComEd Ex. 6.0, p. 6, lines 119-121; Staff Ex. 11.0, p. 5

the current reliability level that is required by law."[28] ComEd's technical witness, Mr. McMahan, had no explanation of how the UUFR project exceeded minimum reliability standards and concurred with Dr. Hemphill[29]. Neither ComEd's policy nor technical experts could explain how or why the UUFR project with its many benefits for customers, ComEd, the environment, and the local economy was not a necessary project. ComEd's technical expert apparently uses no technical criteria in determining the need for a reliability project and defers to a policy analyst's qualitative opinions of what meets the requirements of Section 8-401.

ComEd Argues the System Is Already Reliable and Compares Favorably With Industry Norms

ComEd's surrebuttal testimony contended that the UUFR project was not necessary because the total system is already reliable and compares favorably with industry norms.[30] It is important to remain focused on the topic at hand, i.e., ComEd's underground mainline feeder cable system failures, not the reliability statistics of ComEd's entire system spread over the northern third of the State of Illinois. Staff witness Stutsman emphasized the importance of looking beyond total system reliability statistics when evaluating a subgroup of circuits or even an individual circuit[31] to identify "leading causes" or pockets of unreliability.[32] This was convincingly illustrated by ComEd[33] showing that while on a system-wide basis ComEd's reliability performance was good yet seven concerns[34] were noted that revealed reliability deficiencies. These deficiencies included ComEd's Southern Region's continued less reliable service,

[28] Staff Ex. 11.0, Attachment B, pp. 1-2
[29] Staff Ex. 11.0, Attachment C
[30] ComEd Ex. 9.0, p. 2
[31] Tr., January 19, 2011, pp. 326-327
[32] Staff Ex. 11.0, pp. 6-7; Staff Group Cross Ex. 1, pp. 20-21
[33] ComEd Cross Ex. 2, pp. 1-7; Tr. January 19, 2011, pp. 325-332
[34] ComEd Cross Ex. 2, pp. 2, 5-6

material deficiencies and NESC compliance issues identified on ComEd's worst distribution circuit (the 2nd worst circuit in the State of Illinois), and increasing backlogs of maintenance.

ComEd criticized Staff for turning to a 10-year old document to locate criticisms of ComEd's reliability. Nevertheless, Staff referenced ComEd's own Blueprint and ComEd's responses to Liberty's 1st set of Recommendations to illustrate commitments made by ComEd to its customers and the Commission on how ComEd would meet its statutory requirements and obligations to customers in the future. The Blueprint, Liberty and Wanda Reder's paper on RCM for distribution underground systems[35] provided support for what good utility practice should be in the maintenance of distribution underground systems with an actual case example from Northern States Power in the late 1990's. Staff referenced these to demonstrate that ComEd has not been committed to improving reliability and has not followed the recommendations in the reports.[36]

If Staff's intention had been to criticize ComEd's total system reliability, Staff would have referred to the docketed Commission assessments of ComEd's reliability per Section 411.140 of Part 411, such as Docket No. 09-0379. Possibly more relevant to this discussion of the necessity to address "leading causes" or "root causes" of ComEd's underground mainline feeder cable system failures would have been a discussion of the past consequences of ignoring necessary work to address root causes known since 1993 as was the case with the Downers Grove substation fire.[37] The investigation report of the August 10, 2005, Downers Grove substation fire found that had ComEd implemented lesson learned or lessons that it should have learned from

[35] Staff Ex. 11.0, Attachment L
[36] Id., pp. 14-16
[37] Staff Group Cross Ex. 1, pp. 20-21, 41-45

prior, similar events, the fire would not have taken place. Even if the fire started, application of lessons learned would have prevented the spread of the fire. Finally, even if the fire propagated, applications of lessons learned would have minimized the damage and hastened service restoration.

ComEd Argues Areas Served by Underground System Are Already Reliable

ComEd indicates that the areas currently served by the underground cable system are already reliable and that the UUFR project is not necessary.[38] At the same time ComEd indicates that in these reliable areas, the UUFR project would nevertheless have significant reliability benefits and provide a significant enhancement to the performance of the underground cable system providing reliability benefits that will continue years after the program period.[39] As Company witness Blaise indicated, "Underground mainline feeder cable system failures… are a **leading cause** of customer interruptions." Even though she acknowledges that "only a very small proportion of the mainline cable system fails," she goes on to suggest that if ComEd were able to be more committed to inspect equipment and test and replace cable, reliability of service would be improved and the total cost of the underground cable operations over the long term could be reduced.[40] Staff witness Stutsman agrees with Ms. Blaise's sentiments about the need for the UUFR project and believes that the Commission should require ComEd to implement the UUFR project.

[38] ComEd Ex. 9.0, p. 2
[39] ComEd Ex. 4.0, p. 12
[40] ComEd Ex. 4.0, pp. 7-8; Staff Ex. 11.0, Attachment L, p. 6

ComEd Argues Staff's Proposal Is an Unfunded Mandate

On a number of occasions, ComEd tried to paint Staff's recommendation as an asymmetrical approach or unfunded mandate upon ComEd. [41] By the term unfunded mandate, ComEd implies that Staff's recommendation prevents ComEd from recovery of its reasonable costs expended in implementing the UUFR project.

ComEd is being disingenuous. Staff has proposed no such mandate nor would such a mandate be consistent with Section 1-102(d). ComEd controls when it files a rate case, what test year it will use, and the start and end dates for the UUFR project. Staff finds the intense budget driven emphasis of the UUFR project in the Alt. Reg. proposal to be problematic.[42] Staff believes that from a cost control or cost management point of view, it is total nonsense[43] to compare costs (or gauge performance) of one activity level with costs at a different activity level. Staff's concerns were further heightened by ComEd's emphasis on doing only the minimal work to become eligible to recover the full budget or share in any savings if costs are below budget.[44] Because of this and the programmatic concerns inherent in the design of the Alt. Reg. projects, Staff believes customer interests would be better served by ComEd recovering its reasonable costs in a future rate case. If the Commission issued a Section 8-503 order directing ComEd to initiate the UUFR project, ComEd acknowledged that an order from the Commission regarding UUFR would solve the regulatory risk problem[45] and there would be little doubt that reasonable costs would be afforded recovery in its next rate case. This would further maintain consistency with the

[41] Staff Ex. 11.0, pp. 2-5, Attachment A
[42] Staff Group Cross Ex. 1, p. 12
[43] Staff Ex. 4.0, pp. 7-8
[44] Tr., January 19, 2011, pp. 302-313
[45] ComEd Ex. 6.0, p. 30, lines 652-653; Staff Ex. 11.0, p. 14

requirements of Section 1-102(d)(vi), which is further supported by Staff's belief that, due to regulatory lag, ComEd would reap operational savings which could offset any O&M expenses brought about by the implementation of the UUFR project until the rates from its next rate case become effective.[46]

2. Utility Electric Vehicle ("EV") Pilot

ComEd seeks Commission approval of the EV Pilot's $5 million budget and recovery of its costs through the Rate ACEP tariff. Staff witness Hinman's testimony establishes two points: first, the proposed budget is inflated and second, despite its apparent specificity, closer investigation shows that ComEd did not support its proposed budget sufficiently to determine its reasonableness. Analysis of the proposed EV Pilot budget supports the conclusion that use of budgets does not provide a reasonable standard upon which to base an alternative regulatory mechanism.[47]

<u>ComEd's Budget-Based Plan for the EV Pilot Program</u>

The EV Pilot's $5 million budget[48] consists of asset with unit cost estimates provided in the table below:[49]

ComEd EV Pilot Program Assets	Unit Cost	Quantity	Total Cost
Plug-in Car			
Price based on Nissan Leaf cost estimate	**$36,000**	**45**	**$1,620,000**
Plug-in Cargo/Service Vehicle			
Price based on Navistar eStar cost estimate	**$135,000**	**8**	**$1,080,000**
Hybrid Bucket Truck (non-pluggable)			
Price based on existing cost for hybrid bucket truck	**$250,000**	**4**	**$1,000,000**
PHEV Digger Derrick Truck			
Price based on cost of Dueco PHEV digger derrick	**$350,000**	**2**	**$700,000**
Level 2 Charging Stations			
Coulomb Technologies Smart Charging station	$5,000		

[46] Staff Group Cross Ex. 1, p. 31
[47] AARP Ex. 1.0, pp. 17-18; AG Ex. 1.0, p. 13; AG Ex. 3.0, pp. 5-6; Staff Ex. 1.0R, pp. 14, 17-20; Staff Ex. 2.0 (Rev.), pp. 8-9, 13, 16, 18-19; Staff Ex. 8.0, pp. 9-14; Staff Ex. 9.0 (Rev.), pp. 2-3
[48] ComEd Ex. 1.0 (Rev.); ComEd Ex. 1.2
[49] ComEd Ex. 2.0, p. 5; Staff Ex. 9.1, pp. 3-4, 42-43, 63-64

Installation (labor, material)	$5,000		
Total equipment costs per charge point	**$10,000**	**55**	**$550,000**
Incidental equipment and contingency			
Contingency for unforeseen installation costs			**$50,000**
Total Vehicles		**59**	
Total Charging Stations		**55**	
Proposed Targeted Investment Expenditure Amount			**$5,000,000**

ComEd witness McMahan[50] presented the details of the proposed EV Pilot program, while Dr. Hemphill[51] offered some insights into the proposal. ComEd described the EV Pilot program's objectives as follows:[52]

> The EV pilot will study EVs' operational, economic, and environmental costs and benefits, and assess EVs' ability to replace carbon-fueled vehicles in the utility fleet. The objective is to fulfill this program within the proposed $5 million budget.

The Company proposes to use the EV Pilot budget as the standard for measuring the utility's performance[53] under Section 9-244(a).[54] ComEd witness Hemphill stated regarding ComEd's budget-based alternative regulation plan:[55]

> ComEd is proposing to: (1) use **budgets as a benchmark** for evaluating the success of its alternative regulation program; and (2) make **discretionary investments** out of a conviction that **their benefits will be greater than their costs**.

As Staff and several intervenors noted, tying the monetary incentive of this Alt. Reg. proposal to budgets creates an economic incentive for ComEd to inflate the

[50] ComEd Ex. 2.0; ComEd Ex. 7.0
[51] ComEd Ex. 1.0 (Rev.), pp. 1, 7, 9, 12, 19, 21, 24-26, 30, 32-34; ComEd Ex. 1.2; ComEd Ex. 6.0, pp. 13-15, 22, 30-32, 42-43, 45; ComEd Ex. 8.0, pp. 4, 7, 12, 22
[52] Staff Ex. 9.1, p. 49
[53] "[T]he Commission, upon petition by an electric…public utility…may authorize for some or all of the regulated services of that utility, the implementation of one or more programs consisting of (i) alternatives to rate of return regulation… or (ii) other regulatory mechanisms that reward or penalize the utility through the **adjustment of rates based on utility performance**. In the case of other regulatory mechanisms that **reward or penalize utilities** through **the adjustment of rates based on utility performance, the utility's performance shall be compared to standards established in the Commission order** authorizing the implementation of other regulatory mechanisms." (220 ILCS 5/9-244(a), emphasis added)
[54] ComEd Ex. 1.0 (Rev.), pp. 18-19; ComEd Ex. 6.0, pp. 10-11
[55] ComEd Ex. 6.0, p. 11, emphasis added

proposed Rate ACEP budgets.[56] ComEd witness Hemphill denied that ComEd has an incentive to make the budgets larger, stating that the budgets were offered in "good faith" and that, "these budgets are based on vendor proposals and on the costs ComEd has incurred in the past."[57] However, ComEd has failed to provide sufficient documentation or evidence to support its cost estimates for most of the assets it proposes to purchase as part of the EV Pilot.[58]

Significantly, the EV Pilot program appears to be the most transparent of the proposed Alt. Reg. programs in that ComEd provided a listing of asset types for purchase and their respective price estimates. Yet despite this apparent transparency, ComEd failed to substantiate the budgeted costs for this program and clearly indicate the specific assets it proposes to purchase. Thus, upon investigation, this program proved not to be transparent.[59] As such, ComEd's failure to substantiate the budgeted costs for the proposed Alt. Reg. programs in this proceeding, along with its lack of transparency regarding assets to be purchased, raises questions regarding the ability of ComEd to provide the information that it anticipates providing the Commission for any future proposed projects, such as a Smart Grid program.[60] Rate ACEP states:[61]

> APPROVAL OF RECOVERY.
> Approval from the ICC for any such program constitutes a determination by the ICC that implementing such program at the **approved budgeted cost is prudent**. Any such approved program **may not again be subject to review** with respect to the **prudence** of such approved program or **the reasonableness of the costs** associated with such program up to and including the amounts approved for recovery for such program.

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[56] AG Ex. 1.0, p. 20; IIEC Ex. 1.0-C, pp. 11, 24; IIEC Ex. 2.0, p. 8; Staff Ex. 1.0R, pp. 14-18; Staff Ex. 2.0 (Rev.), pp. 3, 9; Tr., Jan. 26, 2011, p. 284
[57] ComEd Ex. 6.0, p. 14
[58] Staff Ex. 9.0 (Rev.), pp. 5-8; Staff Ex. 9.1, pp. 1-5, 7-17; ComEd Ex. 7.0, pp. 2-3, 6, 10, 13
[59] Staff Ex. 2.0 (Rev.), p. 22; Staff Ex. 9.0 (Rev.), p. 3
[60] ComEd Ex. 1.0 (Rev.), p. 16; Staff Ex. 2.0 (Rev.), pp. 17-18
[61] Rate ACEP, ComEd Ex. 1.2, Original Sheet No. X+1, emphasis added

ComEd's failure to support its budgeted costs makes it impossible for the Commission to conclude that the costs included in the EV Pilot budget are prudent or reasonable, or even use the budget as the basis for measuring Company performance and the success of an Alt. Reg. program.

Staff's Budget Analysis

Staff determined that ComEd's proposed $5 million budget for the EV Pilot is inflated, and Staff witness Hinman's review suggested that the budgeted $3.22 million cost of some of these assets may be inflated by $1.12 million. Further, this overstatement is likely conservative, because Staff lacks access to the same information that a market participant like ComEd has.[62]

Hybrid Bucket Trucks (non-pluggable)

ComEd originally proposed to purchase hybrid bucket trucks (non-pluggable) consisting of an International chassis with Eaton hybrid drive system and Altec TA40 aerial equipment, with a budgeted cost of $250,000, for deployment to the Distributions System Operations and Construction & Maintenance Departments. In support of this unit cost, ComEd provided invoices for its current fleet of hybrid bucket trucks which listed costs of $214,589.50 and $215,072.94 for the hybrid bucket trucks with TA40 aerial equipment in 2009.[63] In direct testimony, Staff witness Hinman concluded that the hybrid bucket truck budget was inflated by approximately $140,000 [=($[Price in Budget] — $215,000)*4].[64]

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[62] Staff Ex. 2.0 (Rev.), pp. 18-19; Staff Ex. 9.0 (Rev.), p. 2
[63] Staff Ex. 2.0 (Rev.), pp. 7-8; Staff Ex. 9.1, pp. 20, 40, 45
[64] Ms. Hinman also noted that while hybrid electric bucket truck prices could have risen or fallen since 2009, ComEd provided no framework to estimate that change, if any. Nor did ComEd provide an explanation as to why its budgeted unit costs should exceed its highest confirmed expenditure on a similar vehicle by roughly $35,000. (Staff Ex. 2.0 (Rev.), p. 8)

Ms. Hinman also explained how ComEd's budgeted cost for hybrid bucket trucks (non-pluggable) varies depending on the use of the budget.[65] In ComEd's "Clean Cities Project" grant proposal, ComEd budgeted a $230,000 cost per hybrid bucket truck (non-pluggable), which can be broken down into $175,000 for the standard diesel vehicle and $55,000 for the incremental hybrid cost.[66] ComEd budgeted $20,000 more per hybrid bucket truck (non-pluggable) for its Alt. Reg. proposal than it did for its "Clean Cities Project" grant proposal.[67] ComEd provided no explanation for the discrepancy between these cost estimates.[68]

In response, Mr. McMahan criticized Ms. Hinman's estimates, and suggested that ComEd plans to purchase hybrid bucket trucks with a **variety of aerial equipment**[69] whose composition is currently unknown, not just the **Altec TA40[70] model of aerial equipment** that ComEd had previously indicated to Staff.[71] Staff noted that ComEd's revelation that it plans to purchase hybrid bucket trucks with a variety of aerial equipment implied that the EV Pilot program budget was not as transparent, in terms of specific assets to be purchased, as previously represented by ComEd.[72] Not only is the appropriateness of the budget blurred by lack of specificity of vehicle models, it is also blurred by lack of specificity of equipment of the trucks.[73] Technical specifications missing from the proposed program budgets can significantly impact ComEd's final

[65] Staff Ex. 9.0 (Rev.), pp. 19-20
[66] Staff Ex. 9.1, pp. 31-33
[67] Staff Ex. 9.0 (Rev.), p. 20
[68] Mr. McMahan did not address this inflated bucket truck budget in surrebuttal testimony.
[69] ComEd Ex. 7.0, p. 3
[70] Staff Ex. 9.1, p. 40
[71] Mr. McMahan incorrectly claimed that $250,000 was the *average* cost paid by ComEd for hybrid bucket trucks in the past. (ComEd Ex. 7.0, p. 3) Taking the average of the bucket truck prices (including taxes and title) that ComEd has bought, the actual average cost was $216,998. (Staff Ex. 2.0 (Rev.), pp. 7-8) Thus, Staff's estimate for the hybrid bucket truck budget was much closer to the *actual average cost* of hybrid bucket trucks purchased by ComEd. (Staff Ex. 9.0 (Rev.), p. 19)
[72] Staff Ex. 2.0 (Rev.), p. 22; Staff Ex. 9.0 (Rev.), pp. 3, 18
[73] Staff Ex. 9.0 (Rev.), pp. 20-21

investment expenditure[74] amounts.[75] Mr. McMahan states, "Bucket truck **costs vary widely depending** on the **mounted aerial equipment** (e.g., TA40, TA45, TA50), **as well as other components** such as **lighting, storage boxes, and ladder racks**."[76]

While he argued that Staff's estimate was wrong, Mr. McMahan did not describe with precision the specific vehicles ComEd proposed to buy.[77] This made double-checking costs included in the budget and making the determinations required in the Rate ACEP tariff, problematic. Mr. McMahan criticized Staff's hybrid bucket truck cost estimate while continuing to leave open the specific details of the assets it proposed.[78] This fact further complicates the project completion determination that is necessary for calculating the incentive component of Rate ACEP.[79]

The above illustrates a primary flaw in ComEd's budget-based Alt. Reg. proposal; ComEd can more easily complete a program under budget by purchasing assets with lower functionality or with different **components.** ComEd can simply choose the functionality of the assets it procures to ensure that it beats the budgeted cost.[80] In other words, the budget is an illusory benchmark for measuring performance for an Alt. Reg. program.[81]

Ultimately, the situation strays far from Dr. Hemphill's claim that "assumptions and numbers can be double-checked, and the budgets can be altered if appropriate." In

[74] ComEd Response to Staff Data Request JLH 2.03(c) stated: "Programs that are concluded or terminated will have final investment expenditure amounts determined for the program. ComEd will determine the **final investment expenditure amount** for a program by identifying the sum of the actual capital costs it incurred over the life of the program. For each program it approves and for which there are expected to be investment expenditures, the Commission approves the **targeted investment expenditure amount** for the program." (Staff Ex. 9.1, pp. 50-51, emphasis added)
[75] Staff Ex. 2.0 (Rev.), p. 9
[76] ComEd Ex. 7.0, p. 3, emphasis added
[77] Staff Ex. 9.0 (Rev.), p. 21
[78] Staff Ex. 9.0 (Rev.), pp. 27-28
[79] Staff Ex. 9.1, pp. 50-51, 56; Staff Group Cross Ex. 1, p. 47
[80] Staff Ex. 2.0 (Rev.), p. 9; Tr., Jan. 25, 2011, p. 158
[81] AARP Ex. 1.0, pp. 17-18; AG Ex. 1.0, p. 13; AG Ex. 3.0, pp. 5-6; Staff Ex. 1.0R, pp. 14, 17-20; Staff Ex. 2.0 (Rev.), pp. 8-9, 13, 16, 18-19; Staff Ex. 8.0, pp. 9-14; Staff Ex. 9.0 (Rev.), pp. 2-3

reality, ComEd asks the Commission to simply trust in its budget estimates.[82] Staff concludes that ComEd inflated the hybrid bucket truck budget; thus, the Rate ACEP EV Pilot budgeted costs cannot be determined to be reasonable.

Plug-in Cars

ComEd proposes to purchase Nissan Leaf plug-in cars at $36,000 per car for deployment to its Meter Reading Department.[83] ComEd provided no supporting documentation for its Nissan Leaf unit cost estimate. Staff witness Hinman found that the Manufacturer Suggested Retail Price ("MSRP") equals $32,780. This MSRP excludes bulk purchase discounts and the federal tax credit available for this vehicle which amounts to $7,500 per vehicle.[84] ComEd did not propose to flow through the federal tax credit to customers in the originally filed Rate ACEP tariff. In sum, Staff found that the EV Pilot budget was inflated by almost $500,000 for just the plug-in car portion of the EV Pilot budget.[85]

ComEd agreed to change the Rate ACEP tariff to allow the benefits of grants and tax credits to flow through to ComEd's customers, if approved.[86] However, ComEd did not address whether the MSRP was the appropriate cost to include in the budget, or the availability of fleet discounts to ComEd.[87]

Plug-in Cargo/Service Vehicles and PHEV Digger-Derricks

ComEd proposes to purchase Navistar eStar plug-in cargo/service vehicles at a unit cost of $135,000 for deployment to the Supply and Field & Meter Services

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[82] Staff Ex. 9.0 (Rev.), p. 21; ComEd Ex. 6.0, pp. 13-14
[83] Staff Ex. 2.0 (Rev.), p. 5; Staff Ex. 9.1, pp. 20, 40
[84] Nissan's website actually advertises $25,280, the net price after tax savings, which is the price included in Ms. Hinman's analysis of the plug-in car portion of the budget. (Staff Ex. 2.0 (Rev.), p. 11)
[85] Staff Ex. 2.0 (Rev.), p. 11
[86] ComEd Ex. 8.0, p. 22
[87] Staff Ex. 9.0 (Rev.), p. 25

Departments and IHC chassis with DUECO C4047 plug-in hybrid digger derrick trucks at a unit cost of $350,000 for deployment to ComEd's Construction & Maintenance Department.[88] ComEd provided no price quotes or other verifiable information to support the budgeted unit cost estimates of these vehicles.

Staff witness Hinman attempted to independently verify the budgeted prices. She was unable to view the prices of new vehicles, because the manufacturers' websites are protected so that information can only be viewed by members and previous customers.[89] Thus, Staff could not double-check the current list price of plug-in cargo/service vehicles or the PHEV digger-derrick trucks. ComEd did not provide the necessary evidence to show that the Rate ACEP budgeted costs for these vehicles, which represent 36% of the EV Pilot budget, are reasonable.[90]

Level 2 Charging Stations

ComEd proposes to purchase and install 55 Level 2 charging stations[91] at a total cost of $600,000.[92] ComEd states that the Coulomb Technologies CT 2100 "charging station has been chosen for its ability to be networked and **remote communications capability**, enabling **aggregate management of the electrical load** associated with ComEd's fleet of plug-in vehicles."[93] Although ComEd's current fleet of ten Toyota Prius plug-in hybrid electric vehicles ("PHEVs") do not utilize the top-of-the-line Level 2 charging stations such as those ComEd is proposing for the EV Pilot, ComEd still could remotely acquire vehicle performance data[94] and aggregately manage the electrical

[88] Staff Ex. 9.1, pp. 20, 40
[89] Staff Ex. 2.0 (Rev.), p. 7
[90] 36% [=($1,080,000+$700,000)/($5,000,000)] (ComEd Ex. 2.0, p. 5)
[91] Mr. McMahan described charging stations in his rebuttal testimony. (ComEd Ex. 7.0, p. 8)
[92] ComEd Ex. 2.0, p. 5; ComEd Ex. 7.0, p. 8
[93] Staff Ex. 9.1, p. 40, emphasis added; Staff Ex. 2.0 (Rev.), pp. 12-13
[94] Staff Ex. 9.1, pp. 22, 45

load of the vehicles without them, as ComEd admitted in *ComEd's Initial Assessment of Plug-in Electric Vehicles*[95] in discussing its current PHEV Prius fleet.[96]

ComEd witness McMahan stated that the proposed Navistar eStar plug-in cargo/service vehicle "and the Dueco PHEV digger derrick included in ComEd's EV Pilot both **require** Level 2 charging, per the manufacturers' specifications."[97] Staff witness Hinman investigated the budgeted cost of Level 2 charging stations. The Coulomb Technologies CT 2100 charging station price was not publicly available when Staff filed direct testimony.[98] Based on publicly available information, Ms. Hinman discovered that a Level 2 charging station that the proposed plug-in vehicles apparently require can be purchased for approximately $530.[99] Thus, ComEd could purchase 55 of the cheaper charging stations and be significantly under budget by approximately $245,850 [=($5,000 — $530)*55] excluding the installation costs and available federal tax credits. Thus, ratepayers could be required to pay an incentive return on half the difference between ComEd's budgeted amount and the price of cheaper units due to the incentive component of Rate ACEP.[100]

ComEd witness McMahan criticized the cheaper charging station estimates, stating that they "include only the most basic safety and operational functions. They provide no communications, control, or data collection capability, all of which are vital to the ComEd EV Pilot." Mr. McMahan also stated, "use of cheaper charging stations with only rudimentary functionality defeats the purpose of ComEd's EV Pilot, as it provides

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[95] ComEd's "Initial Assessment of the Impact of the Introduction of Plug-in Electric Vehicles on the Distribution System" provided for the ICC's Initiative on Plug-in Electric Vehicles on December 15, 2010. (Staff Cross Ex. 1)
[96] Staff Cross Ex. 1, p. 12; *See also* Tr., Jan. 26, 2011, pp. 276-279
[97] ComEd Ex. 7.0, p. 9
[98] Staff Ex. 2.0 (Rev.), pp. 13-14
[99] Staff Ex. 2.0 (Rev.), p. 13
[100] Staff Ex. 2.0 (Rev.), p. 13; *See also* Tr., Jan. 26, 2011, p. 279

neither the capability to collect data nor the ability to exercise remote charge management."[101] Mr. McMahan provided no explanation as to why the **smart charging technology**[102] that enables data collection capability and remote charge management could not be included in some of the EVs and be used in conjunction with the cheaper Level 2 charging stations.

In his rebuttal testimony, Mr. McMahan stated, "The $5,000 per unit estimate for the CT-2100 [charging station] is based on a quote from Coulomb Technologies."[103] Mr. McMahan provided this expired vendor quotation three months after ComEd's initial filing. However, the vendor quotation did not provide the number of charging stations the quotation applied to, which potentially failed to account for any bulk discounts that ComEd might receive from purchasing 55 charging stations.[104] ComEd did not offer any less expensive alternatives to the charging station it proposed.

Staff also takes issue with ComEd's budgeted installation costs for the charging stations. Because ComEd did not provide actual quotes or any other supporting documentation for its budgeted installation costs, Ms. Hinman relied on publicly available information to estimate charging station installation costs. Staff reviewed a U.S. Department of Energy Study ("DOE Study") regarding charging infrastructure that was completed in November of 2008 and which provided estimates for the costs of

[101] ComEd Ex. 7.0, pp. 10, 12
[102] ComEd used smart charging technology with its fleet of Toyota Prius plug-in cars. (ComEd Ex. 7.0, p. 5) The smart charging technology allowed remote communications, load control, and data collection capability. (Staff Cross Ex. 1, p. 12; *See also* Tr., Jan. 26, 2011, pp. 276-279) The lifecycle cost data that will be collected for the EVs and compared with equivalent "non-EV" vehicles in the ComEd fleet throughout the pilot period include: (i) initial purchase costs, (ii) petroleum fuel usage, (iii) electricity usage, (iv) annual maintenance (vehicles and infrastructure), (v) vehicle fuel economy, (vi) greenhouse gas emissions, (vii) vehicle operations (reliability and driver feedback), (viii) cost of charging infrastructure, and (ix) battery performance over time. Most of this information is available from ComEd's existing fleet management system. (Staff Ex. 9.1, p. 22)
[103] ComEd Ex. 7.0, p. 10
[104] Staff Ex. 9.1, p. 8

Level 2 charging stations and the installation costs in a variety of settings. The DOE Study disaggregated commercial Level 2 charging infrastructure costs by labor, material, permits, and signage for the EVSE[105] wall boxes, EVSE charge cords, circuit installation with separate meter and breaker panel, and administration costs. In sharp contrast to the information provided by ComEd, the DOE Study actually listed assumptions used to develop the cost estimates for the Level 2 charging stations and their installation. The cost per charge point (including the charging station and installation cost) changed significantly from $1,520 for a 5-vehicle station, $1,852 for a 10-vehicle commercial facility charging station, to as high as $2,146 for a single vehicle residential charger. However, these figures are still all significantly less than the $10,909 per charge point budgeted by ComEd. ComEd could purchase and install charging stations significantly under budget without any efficiency advantage. Based on the aforementioned estimates, Staff witness Hinman estimated the charging infrastructure budgeted cost to be inflated by approximately $498,135 [=($10,909 — $1,852)*55] (excluding available tax credits).[106]

In rebuttal testimony, Mr. McMahan criticized some of the assumptions used by the DOE Study, but his critique did not present many alternative assumptions to support replacement of those assumptions or how their replacement would justify ComEd's higher budgeted cost. Staff had presented charging infrastructure and installation cost estimates from the DOE Study in response to Mr. McMahan's direct testimony that provided no assumptions behind ComEd's budget beyond the $10,000 per charging station and $50,000 for incidental equipment and contingency. Only in its Response to

[105] Charging stations are also known as Electric Vehicle Supply Equipment ("EVSE").
[106] Staff Ex. 2.0 (Rev.), pp. 15-18; ComEd Ex. 7.0, pp. 11-13

Staff Data Request DLH 2.04 for workpapers supporting ComEd's exhibits, did ComEd disaggregate the Level 2 charging station costs by chopping the $10,000 cost in half with $5,000 for the charging station and $5,000 for installation of the charging station. Mr. McMahan's workpaper did not breakdown the component costs[107] for the charging station and its installation, let alone any assumptions behind those numbers. Rather than provide documentation for ComEd's installation cost estimates, Mr. McMahan simply asserted that the only publicly available study of EV charging station installation costs should not apply to ComEd's proposed EV Pilot program.[108]

In attempting to refute the DOE Study's assumptions, Mr. McMahan claimed that wall-mounted[109] units were not applicable, yet he later indicated under cross examination that ComEd charges **all** of its Toyota Prius plug-in cars on an electrical outlet from the wall.[110]

In addition, ComEd states that it would select the locations for charging stations to optimize the balance between installation costs and vehicle deployment benefits, and that required upgrades to the distribution system would be one of the criteria used to select deployment locations.[111] Rather than building this consideration into its budget, ComEd simply proposes the maximum amount for installation cost in addition to a $50,000 installation cost variability fund.

[107] Components such as conduit, conductors, service panels, breakers, and cement.
[108] Staff Ex. 9.1, pp. 1-5; ComEd Ex. 2.0, p. 5; ComEd Ex. 7.0, pp. 7-13
[109] "The **main purpose** [of the ChargePoint Dual Mode Wall Model: CT2103 charging station] is to minimize the install footprint in garages and parking structures and to **minimize installation costs**. It supports **120V**/15A circuits and can be used with a normal household cord and can also connect to cars with the J1772 cable, supplying up to **240V**." (Staff Ex. 9.1, pp. 9-10)
[110] ComEd Ex. 7.0, p. 12; Tr., Jan. 25, 2011, p. 126 "***Note:** *Both the 120VAC and the 208/240VAC charging outputs can operate simultaneously*." (Staff Ex. 9.1, p. 72, emphasis in original) The dual output feature of the charging station added roughly $27,500 [=($4,350 – $3,850)×55] to the charging station equipment cost. (Staff Ex. 9.1, p. 8)
[111] Staff Ex. 9.1, p. 36

Mr. McMahan concludes, “ComEd **feels** that its $5,000 estimate for installation is more reasonable than those cited by Ms. Hinman from the 2008 U.S. Department of Energy Study.” Mr. McMahan tries to justify ComEd’s budget for charging station installation costs by stating, “per-unit costs for charging infrastructure are based on estimates generated from **conversations** with charging infrastructure providers, and **not actual quotes for work**.”[112] ComEd did not offer the **actual quotes** for the installation of the 36 charging stations in surrebuttal testimony[113] and did not offer the **invoices** for the 36 charging stations recently installed.[114] ComEd provided no verifiable evidence to support its conversation-based installation cost estimates. Without documentation or even the vendor contact information upon which Mr. McMahan’s opinion was based, it was impossible to double-check his conclusion. Considering the dearth of publicly available price information for EV Pilot assets, Dr. Hemphill’s comment[115] implying that the Commission can easily or readily double-check ComEd’s budgeting assumptions and numbers for Alt. Reg. programs is overly optimistic and an unfair representation of ComEd’s proposed budget.[116]

Staff witness Hinman concludes that a $50,000 “variability” fund in no way reflected **actual** charging station installation **costs**. The figure is entirely unsupported and is simply a cushion that may inflate the cost that customers ultimately have to pay. Mr. McMahan alleges that Staff’s analysis failed to consider **actual costs**, yet Mr. McMahan admitted that ComEd’s budget for charging station installation cost was **not**

[112] ComEd Ex. 7.0, p. 13, emphasis added
[113] “Installation of these 36 charging stations will be completed by the end of 2010.” (Staff Cross Ex. 1, p. 14) This timeline is consistent with allowing ComEd to take advantage of the 50% federal tax credit before it reduced to 30% in 2011. ComEd surrebuttal testimony was filed January 10, 2011 and ComEd failed to respond to Staff’s concerns regarding the EV Pilot budget.
[114] Staff Cross Ex. 1, p. 14; Tr., Jan. 25, 2011, p. 183
[115] ComEd Ex. 6.0, pp. 12-14
[116] Staff Ex. 9.0 (Rev.), pp. 13, 26

even based on **actual quotes** for work, much less **actual costs**.[117] ComEd asks the Commission to trust ComEd's estimate for charging station installation costs. Given the paucity of information provided by ComEd regarding the charging stations, there is insufficient information to conclude the budgeted costs are reasonable.[118]

Double Recovery of Costs

When questioned at the hearing about the MSRP of the Chevy Volts[119] that ComEd plans to purchase under traditional regulation,[120] Mr. McMahan stated in part, "Well, it doesn't cost us that… we're not paying that full price… the grant program takes into account the incremental cost between a traditional vehicle and EV, and then our cost share portion is the base cost of the car."[121] All of the vehicles that ComEd proposed in the EV Pilot "will be used to replace older vehicles that are at the end of their useful life."[122] If the Commission approves the EV Pilot and the Alt. Reg. proposal, which Staff recommends it should not, ComEd should not be allowed to recover the full cost of the vehicles prior to their inclusion in rate base in a subsequent rate case, since they are replacing vehicles that were already in rate base.[123] At most, recovery of the incremental cost above a standard gas vehicle is appropriate. ComEd's current proposal would be a double recovery of costs.[124]

[117] ComEd Ex. 7.0, pp. 13-14
[118] Staff Ex. 9.0 (Rev.), pp. 26-27; Staff Ex. 9.1, p. 36; ComEd Ex. 7.0, p. 13
[119] The Chevrolet Volt has an MSRP of roughly $41,000, thus the 11 Volts that ComEd plans to purchase would total $451,000 based on this MSRP. (Tr., Jan. 25, 2011, p. 184)
[120] Staff Cross Ex. 1, pp. 13-15
[121] Tr., Jan. 25, 2011, p. 185
[122] Staff Ex. 9.1, pp. 20-21; ComEd Ex. 2.0, p. 6
[123] Tr., Jan. 27, 2011, p. 532
[124] ComEd Ex. 8.0, p. 22; Tr., Jan. 27, 2011, p. 532

Staff's Recommendation

ComEd does not provide sufficiently detailed information to substantiate the costs included in its proposed Rate ACEP EV Pilot budget. ComEd does not provide a detailed list with complete technical specifications or even information on vehicles most likely to be retired. Of the five categories[125] of proposed EV Pilot program assets, ComEd provided only one vendor quotation to support its budgeted cost for the specific Level 2 charging station it proposed.[126] ComEd offered no alternatives to this specific charging station, although smart charging technology that enables EV lifecycle cost data collection and remote charge management capability has been successfully used with ComEd's current Toyota Prius fleet and this technology could likely be used in conjunction with cheaper Level 2 charging stations. ComEd provided insufficient information to substantiate the costs of the remaining $4.7 million[127] in the EV Pilot budget.

ComEd may have access to price discounts of which only it is aware. Such discounts would reward ComEd not for superior efficiency, but rather for its superior knowledge as a market participant. The fact that Staff's research found lower asset prices which may be more reasonable points to the intractable nature of calculating a fair budget to be used to measure Company performance. There are significant disparities in resources (including time), knowledge, and utility planning and resource

[125] These five broad categories include: (1) Plug-in car, (2) Plug-in cargo/service vehicle, (3) Hybrid bucket truck (non-pluggable), (4) PHEV digger-derrick, and (5) Level 2 charging stations for company vehicles. (ComEd Ex. 2.0, p. 5, line 86)

[126] Staff Ex. 9.0 (Rev.), pp. 7-8; Staff Ex. 9.1, p. 8

[127] $4.725 million [=$[EV Pilot Budget] – ($5,000×55 charging stations)]

deployment expertise between ComEd and other parties and the continuing input required by stakeholders and multiple levels of review is burdensome.[128]

Staff recommends that the Commission reject the proposed Rate ACEP budget for the EV Pilot since the reasonableness of the costs included in the proposed EV Pilot budget is insufficiently supported. Staff concludes that ComEd proposed an inflated budget for its EV Pilot.[129] However, assuming approval of the EV Pilot and the Alt. Reg. proposal, ComEd should not be allowed to recover the full cost of the EVs, since they are replacing vehicles that were already in rate base.[130] If the Commission approves the EV Pilot and the Alt. Reg. proposal, which Staff recommends it should not, Staff recommends that the Commission allow, at most, cost recovery of the incremental cost above a standard gas vehicle because ComEd's current proposal would be a double recovery of costs.[131] The EV Pilot supports Staff's position that a pre-approved budget is not an appropriate standard against which performance can be measured.[132] For these reasons, Staff recommends that the Rate ACEP tariff should be rejected.

3. Low-Income Customer Assistance Program

<u>ComEd Proposal in General</u>

The third component of ComEd's proposed Rate ACEP – Accelerated Customer Enhancement Pilot ("Rate ACEP") is a low-income assistance program. (Petition, p. 1) ComEd further states in its Petition that Rate ACEP would "make those investments under an objective and targeted incentive mechanism that rewards extraordinary

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[128] AARP Ex. 1.0, p. 19; AG Ex. 1.0, pp. 33-34, 44, 47-48; AG Ex. 3.0, p. 3; IIEC Ex. 1.0-C, pp. 10, 16-17; IIEC Ex. 2.0, pp. 9-10
[129] Staff Ex. 2.0 (Rev.), pp. 18-19; Staff Ex. 9.0 (Rev.), p. 20; Staff Ex. 9.1, p. 32
[130] ComEd Ex. 2.0, p. 6; Staff Ex. 9.1, pp. 20-21
[131] ComEd Ex. 8.0, p. 22; Tr., Jan. 27, 2011, p. 532
[132] AARP Ex. 1.0, pp. 17-18; AG Ex. 1.0, p. 13; AG Ex. 3.0, pp. 5-6; Staff Ex. 1.0R, pp. 14, 17-20; Staff Ex. 2.0 (Rev.), pp. 8-9, 13, 16, 18-19; Staff Ex. 8.0, pp. 9-14; Staff Ex. 9.0 (Rev.), pp. 2-3

performance and penalizes failing." (Petition, p. 2) In general, ComEd's Petition cites two overarching goals. First, it will benefit customers by providing continued funding for low-income customers after the current statutory programs expire. (Petition, p. 3) Second, ComEd contents that its alternative regulation program will give the Commission, ComEd, and stakeholders valuable experience with incentive ratemaking and with the process of collaboratively and prospectively guiding long-term investment programs. ComEd further declares that "(a)lternative regulation of this nature is untried in Illinois."[133] (Petition, p. 4)

ComEd Witness Emmons

Mary Anne Emmons, the Director of Customer Assistance Programs, testified that ComEd's proposed low income programs would be funded by a $10 million per year program pursuant to its alternative regulation plan. (ComEd Ex. 5.0, p. 1) Stated more accurately, ComEd intends to charge and collect from ratepayers an incremental $10 million annually for funding low-income energy assistance programs. Ms. Emmons further testifies that "the funding generally ends in 2010; however, low income assistance programs are needed in the future." (Id.) Ms. Emmons states that "(f)ailure to fund these programs will cause these programs to end at a time when our low income customers need them the most." (Id., p. 2)

ComEd's alternative regulation plan, if approved, will provide $10 million to continue the funding for seven low income assistance programs. (Id.) These seven programs are (1) Residential Special Hardship, (2) Helping Hand, (3) Summer

[133] ComEd's Petition fails to reference Nicor Docket No. 01-0705, 02-0067, & 02-0725 (Cons.), a current Alternative Regulation Section 9-244(c) case, that has yet to receive a Commission Order. The subject of that proceeding is Nicor Gas Company's Gas Cost Performance Program (Rider 4 or GCPP) approved on November 23, 1999 in Docket No. 99-0127. Nicor's GCPP was operational for the 3-year period from 2000-2002. Nicor voluntary terminated the GCPP effective December 31, 2002.

Assistance Program, (4) Fresh Start Payment, (5) Small Business and Non-Profit Energy Assistance Program, (6) Nonprofit Agency Matching Programs, and (7) Educational Outreach. (Id.) ComEd argues that continuing to fund the Care Programs at the 2010 level will provide needed assistance for ComEd's low income customers. Ms. Emmons also expressed concern for a group of ratepayers that may not qualify for assistance under some programs: the working poor and those households that have income between 150% and 200% of the federal poverty level. Ms. Emmons believes this group of customers is especially vulnerable and would benefit the most from the continuation of ComEd's assistance programs. (Id., p. 7)

<u>ComEd Witness Hemphill</u>

In his surrebuttal filed on January 10, 2011, ComEd witness Hemphill states that the proposed Rate ACEP would address a variety of issues, one such issue being immediate – the termination of the ComEd's Affordable Reliable Energy ("CARE") low-income assistance programs ("LIAP"). Since 2007, ComEd's CARE programs have been funded under the provisions of Public Act 95-0481. Dr. Hemphill further stated that the funding of the CARE programs expired in 2010, per Section 16-111.5A(e) of the PUA. (ComEd Ex. 8.0, p. 3)

<u>Staff's Position</u>

Staff is not attempting to downplay the critical need for low-income assistance, but it believes certain critical facts must be brought forward so that the Commission may make an informed decision. First, regarding ComEd's comment that the funding of low-income assistance has been terminated and more specifically to Dr. Hemphill's statement that the funding is to terminate per Section 16-111.5A, this statement does not accurately reflect the state of the law. ComEd, as all other Illinois electric and gas utilities, are required by law to continue the funding established under Section 16-111.5A through December 31, 2011 by a new Section 8-105 provision of the PUA:

> Notwithstanding any other provision of this Act, an electric or gas utility serving more than 100,000 retail customers as of January 1, 2009, shall offer programs in 2010 and 2011 that are authorized under Section 16-111.5A of this Act or approved by the Commission specifically designed to provide bill payment assistance to customers in need. … (220 ILCS 5/8-105)

Thus, the new Section 8-105 is to provide funding previously covered by the expired Section 16-111.5A.

The second fact regarding low-income energy assistance funding to be brought to the Commission's attention is the Stipulation and Order entered into by ComEd and the other parties in Docket No. 10-0640.[134] That Stipulation was filed on the Commission's e-Docket system on December 22, 2010 (Joint Exhibit 1.0); the Commission entered its Order approving such agreement on January 5, 2011; and Dr. Hemphill's surrebuttal was filed on January 10, 2011. In that proceeding ComEd agreed to fund its Care programs through 2011 and further agreed to expand funding up to 200% of the federal poverty level, thus, alleviating a concern previously raised by ComEd witness Emmons. (ComEd Ex. 5.0, p. 7)

Third, ComEd customers are currently paying for low-income energy assistance. Each and every month ComEd's residential customers are charged 48 cents for energy assistance under the provisions of the Supplemental Energy Assistance Fund. (305 ILCS 20/13) This amount is included in the monthly customer charge. On an annual basis ComEd's residential customers contribute approximately $19.8 million to the

[134] Docket No. 10-0640, Commonwealth Edison Company, Application for Approval of a Payment Assistance Plan, Offered Under the Authority of Section 8-105 of the Public Utilities Act, Order Entered January 5, 2011.

Supplemental Energy Assistance Fund. (Tr., January 26, 2011, pp. 433-435) Should these same ComEd residential customers also be customers of the local gas utility (i.e., Ameren, Nicor, Peoples Gas, or North Shore) then an additional 48 cents per month for energy assistance (or approximately $19.8 million annually) is also collected for such gas service. (305 ILCS 20/13) Additional low-income assistance funding is provided by those electric customers with an annual demand of less than 10,000 kWhs (kilowatts) at a rate of $4.80 per month; electric customers with an annual demand greater than 10,000 kWhs are charged $360 per month. (Id.) Thus, ComEd customers are currently making substantial contributions to low-income energy assistance.

Fourth, contrary to ComEd's statements, low-income energy assistance will continue, and it will continue after 2011. The newly enacted Section 18 of the Energy Assistance Act requires that, by September 1, 2011 a statewide Percent of Income Payment Plan (PIPP or PIP) is to be fully operational. This is a mandatory bill payment assistance program for low-income residential customers of Illinois utilities serving more than 100,000 retail customers as of January 1, 2009. Utilities in this category include Ameren, Nicor, Peoples Gas, North Shore Gas, and ComEd. In addition to providing assistance for current monthly charges, the PIPP also includes an Arrearages Reduction Program. (305 ILCS 20/18) Thus, recently enacted legislation will provide additional support for low-income energy assistance.

Fifth, as previously discussed, ComEd's customers currently pay a low-income energy assistance charge as mandated by law (i.e., the monthly 48 cents, $4.80 or the $360 monthly charge for the Supplemental Low-Income Energy Assistance Fund). These amounts were established by legislative action. ComEd's proposal circumvents the normal legislative process. It puts ComEd in a role that has traditionally been reserved for the General Assembly on a state-wide basis. ComEd's proposal gives priority to its service territory over a comprehensive state-wide approach. Furthermore, ComEd's proposal adds new or incremental charges to the existing monthly charges for the Supplemental Low-Income Assistance Fund. Thus, if approved ComEd's residential customers would pay the required 48 cents per month plus any additional amounts required by its alternative regulation proposal.

Sixth, ComEd witness Emmons was asked during cross-examination whether ComEd provided a payment option whereby customers could check a box or insert an amount on a blank line for a voluntary energy assistance payment:

> Q. Do ComEd customer bills include a voluntary energy assistance provision? And by that I mean a check box or a blank line or something?
>
> A. We did have that program. We ended it in 2010, the administrative costs associated with the program exceeded what we were collecting.
>
> Q. Okay. So you have no such option at this time?
>
> A. Not at this time.
>
> (Tr., January 23, 2011, p. 371)

Thus, ComEd's low-income energy assistance request appears to lack a certain level of sincerity on ComEd's part when it does even not provide a basic billing option to collect voluntary funding. ComEd appears to be saying that low-income funding is acceptable, so long as the ratepayers provide the funding and it does not require any effort on its part.

Staff Recommendation

Staff recommends that the Commission deny Rate ACEP. If the Commission disagrees and approves Rate ACEP, however modified, then for all the reasons stated above, Staff believes ComEd's request for a Low-Income Customer Assistance Program as part of its proposed Rate ACEP should be denied.

C. Mechanism for Future Rate ACEP Projects

1. Subsequently-Approved Smart Technology Investments

2. Proposed Future Use of Rate ACEP as Recovery Mechanism

ComEd proposes to include terms in Rate ACEP that refer to the costs of Distribution Automation and other future smart grid projects. The terms are DAADC ("Distribution Automation Assessment"), SMADC ("Smart Meter Assessment"), APADC ("Approved Program Assessment"), and SMCAADC ("Smart Meter Customer Applications Assessment"). ComEd is not proposing any smart grid investments in this proceeding, so these terms would be equal to zero until ComEd receives approval for and starts spending money on smart grid projects. (Staff Ex. 3.0, pp. 2-3) If Rate ACEP is approved, inclusion of the terms in the tariff would permit ComEd to use Rate ACEP as a funding mechanism for approved smart grid projects. Inclusion of the smart grid terms are premature and unnecessary and, in the absence of specific smart grid proposals, inappropriate. ComEd's proposal should be rejected.

No party supports ComEd's proposal. Staff, AARP, and IIEC explicitly oppose the inclusion of the smart grid terms in Rate ACEP, and the AG and CUB recommend that Rate ACEP be rejected in its entirety. (Staff Ex. 3.0, pp. 3-4; Direct Testimony of Barbara Alexander, p. 3; IIEC Ex. 1.0, p. 2; AG Ex. 1.0, p. 3; CUB Ex. 1.0, p. 2)

The proposal is premature because the Commission has already established a multi-step process to evaluate smart grid investments. This process is not yet complete. The process involves a number of initiatives, including ComEd's ongoing

Advanced Metering Infrastructure ("AMI") pilot program; the Illinois Statewide Smart Grid Collaborative ("ISSGC"); the Smart Grid Policy Docket; and the analysis of the AMI pilot program, which is expected to be completed in Fall 2011 (IIEC Ex. 1.0, pp. 4-6; Staff Ex. 3.0, pp. 4-5) If ComEd follows the timetable described in the Commission's Order, it would file a smart grid proposal (termed an "Implementation Plan") after these activities are completed (Order, Docket No. 07-0566, September 10, 2008, p. 143), or around the November 2011 timeframe. (Staff Ex. 3.0, p. 4) Thus, there is no particular urgency for the Commission to approve ComEd's proposal.

The Company, however, argues that customers will be harmed unless ComEd secures a smart grid cost recovery mechanism in this proceeding. Dr. Hemphill states that:

> [W]ithout a mechanism to go forward, the benefits to customers [the] Northern Illinois economy, and society <u>will</u> be delayed and lost. (ComEd Ex. 1.0, p. 15)

In response to Dr. Hemphill, Dr. Schlaf noted that ComEd's timetable for submitting smart grid projects is essentially the same as the timetable that was set in the Docket No. 07-0566 Order; that is, regardless of whether a recovery mechanism is approved now or pursuant to an Implementation Plan docket, the timeline for submitting projects for Commission approval would remain the same. No customer benefits would be lost because of the "delay" in obtaining approval for the recovery mechanism. Moreover, ComEd would have additional opportunities to propose a cost recovery mechanism should the Commission not adopt ComEd's proposal to include the smart grid terms in Rate ACEP. First, ComEd could file an alternative regulation proposal when it submits smart grid projects for approval. This option would allow the Commission to evaluate the cost recovery proposal in light of the actual program being proposed. Second, ComEd could seek recovery through traditional rate-of-return regulation. And, third, ComEd could file for recovery through a rider, assuming that it is a legally viable option. (Id., p. 7)

ComEd's proposal in this proceeding to include smart grid terms in Rate ACEP is inappropriate because ComEd has offered only limited information about the types of smart grid investments it might consider and propose in the future. Aside from a general description of the types of smart grid investments, there is nothing for the Commission or interested parties to evaluate with respect to potential smart grid investments. (Staff Ex. 3.0, p. 3) As IIEC witness Stephens stated, the Commission would be "forced to make a decision in a vacuum without facts sufficient for a fully reasoned determination of the issues defined by Section 9-244 of the Illinois Public Utilities Act ("the Act")." (IIEC Ex. 1.0, p. 6) Moreover, as Dr. Schlaf noted, it would be inadvisable to assume that the cost recovery mechanism proposed in this proceeding would be suitable for future smart grid investments. (Staff Ex. 3.0, p. 3)

Dr. Schlaf noted that Commission rejection of ComEd's proposal to include the smart grid terms in Rate ACEP would be unlikely to diminish ComEd's continuing interest in evaluating smart grid technologies. For example, ComEd has been studying advanced metering for several years. The Company submitted a full-deployment proposal for advanced meters in Docket No. 07-0566 (the Commission ultimately determined to approve only the AMI pilot). (Id., p. 6) It has already deployed approximately 131,000 advanced meters. (ComEd Ex. 1.0 Revised, p. 14) ComEd also applied for funding to expand its metering program through the federal stimulus program. Thus, Dr. Schlaf concluded that it would be surprising if Commission rejection of ComEd's proposal caused ComEd to suspend its evaluation of advanced meters. (Id., p. 6)

3. Proposed Rate ACEP Review Procedure

D. Alternative Regulation in General and Rate ACEP

1. Defining Alternative Regulation

2. Analyzing Rate ACEP

E. Rate Design Issues (Uncontested)

The proposed tariff in this docket states the following:

> The $ACEPA_{DC}$ is applied to each retail customer to which delivery class, DC, is applicable during the monthly billing period, and such $ACEPA_{DC}$ is incorporated into the customer charge applicable to such retail customer. For a retail customer for which no customer charge is applied in accordance with the provisions of the tariff for electric service applicable to such retail customer, a customer charge that includes the $ACEPA_{DC}$ is included on such retail customer's monthly bill. (ComEd Ex. 1.2, ILL. C.C. No. 10, Original Sheet No. x+17)

Based on this proposed tariff, Staff witness Harden concluded that the Company proposed to include the charge for Rate ACEP (Accelerated Customer Enhancements Pilot) within the customer charge applicable to each retail customer. (Staff Ex. 6.0, pp. 3-4) The Company did not present any testimony on this subject. The Company's position on this issue is only provided through the proposed tariff sheets.

The Company provided Staff with information that specified that the components already included in the monthly customer charge are: (1) Base rate for the customer charge component; (2) IDUF (incremental distribution uncollectible cost factor); (3) Resources Charge; (4) Low Income Charge; and (5) RRTP Charge (Residential Real Time Pricing). (Staff Ex. 6.0, Attachment 6.01)

Staff objected to the Company's proposal to include the charge for Rate ACEP within the monthly customer charge. (Staff Ex. 6.0, p. 4) As discussed above, besides the base rate charge, four additional charges are already recovered through the monthly customer charge. The primary component of the monthly customer charge is the base rate which recovers the customer-related costs that do not vary based on the amount of electricity delivered to customers. These customer-related costs include those related to billing, payment processing, and other customer services. Adding in other costs to the customer charge that have no relationship to customer-related costs may cause confusion for customers. Also, the Company's proposal for Rate ACEP is not transparent. It does not identify the additional component that ComEd proposes to include in the customer charge. Therefore, customers would be unaware of what they are paying for. Finally, Rate ACEP has no relevance to the customer charge. Rate ACEP will primarily recover the costs of offering advanced technologies to ComEd customers and provide an opportunity for alternative regulation. As an alternative to traditional regulation, the funding for these four specific initiatives should not be included in the traditional regulation cost recovery mechanism. Therefore, Staff recommended that the Commission should reject the Company's proposal to include Rate ACEP in the monthly customer charge. (Staff Ex. 6.0, pp. 4-5)

If the Commission approves Rate ACEP, Ms. Harden recommended that the Rate ACEP charge be shown separately as a line item on customers' monthly bills so that they can understand exactly what costs are being billed to them each month. ComEd accepted Staff's recommendation. (ComEd Ex. 6.0, p. 46)

Additionally, the Company proposed that the Rate ACEP charge should be a charge per-customer. Ms. Harden did not object to the Company's proposal for the

Rate ACEP charge to be on a per-customer basis, if the Commission approves Rate ACEP. (Staff Ex. 6.0, p. 6)

IV. STATUTORY REQUIREMENTS AND REQUESTED APPROVALS

A. Section 9-244 of the Public Utilities Act

1. Section 9-244(b): Findings for Approval of Alternative Rate Regulation Program

a. Finding under 9-244(b)(1)

Under Section 9-244(b)(1) ComEd must show that the "program is likely to result in rates lower than otherwise would have been in effect under traditional rate of return regulation for the services covered by the program and that are consistent with the provisions of Section 9-244." ComEd witness Dr. Hemphill states, "Compared to implementing these programs through traditional regulation, the proposal is likely – indeed, essentially certain – to lower customers' rates." (ComEd Ex. 1.0 Revised, p. 29) He reasons that Rate ACEP reduces ComEd's O&M expenses by 5%, and he further argues that the budgeted O&M amount already includes "known and measureable savings." (ComEd Ex. 1.0 Revised, p. 13) Even though the 5% reduction is restricted to $2 million, total recovery is also limited to the budget.

Staff disagrees. The proposed 5% reduction in O&M expenses represents savings for some portion of O&M costs. However, the expense reduction is limited to $2 million, and the limit applies not just to currently proposed projects, but to all projects whose costs are to be recovered under Rate ACEP. Thus, the $2 million limit remains constant even if smart grid and distribution automation (budgeted at $125 million) are implemented in Rate ACEP. A spending cap equal to the budget also imposes some restraint; however, as argued above, ComEd has an incentive to set budgets as high as it can, and it is difficult to verify that the budget is correctly specified. (Staff Ex. 1.0R, p. 14) Also, the budgets which ComEd alleges will induce it to restrain spending below counterfactual TR levels are based more on trust than evidence. For example, see Ms. Hinman's rebuttal testimony (Staff Ex. 9.0), in which she discusses the EV Pilot budget. (Staff Ex. 8.0, p. 18)

As Dr. Rearden points out, customers pay higher rates under Rate ACEP in the period from its inception until ComEd's next rate case, because ComEd would begin recovering its costs within three months from when it starts the project's construction. Under TR, ComEd's cost recovery would only begin after the next rate case concludes. For that reason, costs should be compared over the life of the equipment. In Rate ACEP, customers begin paying for the investment and expenses only three months after they are incurred, while under TR, customers do not begin paying those costs until after the next rate case in which the investment is determined to be prudent and used and useful and the expenses are determined to be just and reasonable. The difference in lifetime costs between the two approaches is that under Rate ACEP, ComEd begins recovery of and on soon after incurring costs, but depreciation accumulates every quarter, so Rate ACEP revenues decrease until the next rate case, because the revenues are based upon net plant which is decreasing every quarter. Under TR, cost recovery is dependent on the timing of the next rate case and whether the Company bases its request for a rate increase on a historical or future test year. Cost recovery only begins after the subsequent rate case is concluded and the cost recovery revenue stream is constant until new rates are determined in a subsequent rate case. (Staff Ex. 1.0R, pp. 14-16) TR would also allow the Company to begin cost recovery prior to the

Company incurring the costs if the Company based its revenue requirement on a future test year.

On the other hand, Rate ACEP might comply with Section 9-244(b)(1) if ComEd implements the program more efficiently by spending less under Rate ACEP than it would if its costs were recovered under TR. And this can be true only if those induced reductions exceed the costs imposed by the quicker recovery that occurs under Rate ACEP. (Staff Ex. 1.0R, pp. 16-17)

Dr. Hemphill appears to contend that these incentives are effective in inducing ComEd to be more efficient in its investments and thus lower costs relative to TR. ComEd, however, offers no persuasive evidence that Rate ACEP's structure provides those strong incentives. Investment implementation is largely an engineering function that engineers presumably design using least cost techniques. ComEd appears to argue that that is not sufficient incentive, and that only when recovering its costs through Rate ACEP will it complete projects more cheaply and run them more efficiently. Dr. Hemphill simply does not support his contention that Rate ACEP can induce such a leap in efficiency. While it is not theoretically impossible that these incentives are sufficiently strong, ComEd offers no concrete evidence to support his contention. (Staff Ex. 1.0R, p. 17) The calculations that could demonstrate compliance with Section 9-244(b)(1) require significantly more analysis than ComEd has engaged in or up to this point provided. ComEd needs to calculate the difference in customers' rates between TR and Rate ACEP that are likely to occur over time. And it should clearly state its assumptions concerning its cost incurrence and how quickly those costs are likely to be recovered in rates under TR and Rate ACEP. ComEd does not adequately examine these issues. (Staff Ex. 8.0, p. 18)

b. Finding under 9-244(b)(2)

Under Section 9-244(b)(2) the Company must show that "the program is likely to result in other substantial and identifiable benefits that would be realized customers served under the program and that woud not be realized in the absence of the program. Dr. Hemphill argues that all proposed programs have benefits not available under TR, but the only reason that potential benefits are not available under TR is that ComEd states that it will not proceed with the projects unless the costs to implement them are recovered through Rate ACEP. Thus compliance with Section 9-244(b)(2) is a tautology. However, ratepayers as a whole do not receive "substantial benefits" from the Low Income Assistance Program, since it is a simple transfer from one group of ratepayers to another. Also, the incentive mechanism does not operate on Low Income Assistance Program costs, so Rate ACEP cannot generate any benefits beyond the simple transfer of value from one group of ratepayers to another. (Staff Ex. 1.0R, p. 20)

Further, in response to Dr. Hemphill's rebuttal testimony, Dr. Rearden noted there are many ways that programs to aid low income families could be funded. The benefits to low income customers are not uniquely available only under Rate ACEP, so if Rate ACEP is not approved, any benefits from a low income program are available "in the absence of the program." And using Dr. Hemphill's logic, many reallocation programs could comply with Section 244(b)(2), if the Commission only need consider the extent to which one group benefits without regard to the costs imposed on other customers. (Staff Ex. 8.0, pp. 18-19)

Dr. Hemphill argues that that the counterfactual case to examine for purposes of Section 9-244(b)(2) is not ComEd entering into the same project funded by ratepayers under AR compared to funding under TR. According to Dr. Hemphill, the comparison should be that these projects are not done at all. But at the same time, in analyzing Rate ACEP's compliance with (b)(1), he argues that the comparison should assume the projects are implemented. (ComEd Ex. 8.0, p. 17)

c. Finding under 9-244(b)(8)

Under Section 9-244(b)(8) the Company must show that the "program includes provisions for an equitable sharing of any net economic benefits between the utility and its customers to the extent the program is likely to result in such benefits." ComEd has not demonstrated that there are any net benefits to any of its programs. Due to problems with using budgets to evaluate the utility's performance, Dr. Rearden argues that Rate ACEP's incentive mechanisms do not, by themselves, guarantee that net benefits are fairly allocated. ComEd has proposed to collect its costs through a per customer charge allocated by customer class. Staff witness Cheri Harden addressed ComEd's cost recovery method in her testimony (Staff Ex. 1.0R, p. 22) which is addressed in III.E. above.

d. Findings under 9-244(b)(3) – (b)(7)

Under Sections 9-244(b)(3)-(7) the Company must show:

> (3) the utility is in compliance with applicable Commission standards for reliability and implementation of the program is not likely to adversely affect service reliability; and
>
> (4) implementation of the program is not likely to result in deterioration of the utility's financial condition; and
>
> (5) implementation of the program is not likely to adversely affect the development of competitive markets; and
>
> (6) the electric utility is in compliance with its obligation to offer delivery services pursuant to Article XVI; and

> (7) the program includes annual reporting requirements and other provisions that will enable the Commission to adequately monitor its implementation of the program…

With respect to Section 9-244(b)(3), Staff does not contest that ComEd currently meets Commission standards, and it does not dispute that UUFR has a good chance to improve reliability. However, as discussed in Staff witness Stutsman's testimony, there is a danger under Rate ACEP that this reliability program gets shortchanged in order to bring it in under budget. (Staff Ex. 1.0R, p. 21)

With respect to the condition in Section 9-244(b)(4), Dr. Hemphill contends that ComEd's financial condition will deteriorate if it is not granted approval for Rate ACEP and the proposed projects are funded through TR. (ComEd Ex. 1.0 Revised, p. 31) Thus, he claims that Rate ACEP protects customers, and ComEd only intends to engage in the program if Rate ACEP is granted. (ComEd Ex. 6.0, p. 42) However, it appears to Staff that Rate ACEP is not likely to lower rates relative to TR (i.e., it will not likely lower ComEd's revenues), so it does not seem that Rate ACEP is likely to result in a deterioration of ComEd's financial condition. (Staff Ex. 1.0R, p. 21)

With respect to Section 9-244(b)(5), Staff notes that during cross examination, ComEd witness Hemphill reiterated his opinion that ComEd may be the provider of charging infrastructure when he quoted Acting Commission Chairman Flores, "It's not just about being able to hook up or plug in your electric car at home. …It's also about being sure you have the necessary infrastructure so that you can facilitate the electrification of transportation throughout the state."[135]

[135] ComEd Ex. 6.0, p. 31; Tr., Jan. 26, 2011, pp. 443-444

In a report[136] provided to the Commission, ComEd stated that the deployment of plug-in electric vehicle charging infrastructure appears to fall within the definition of a competitive service.[137] In essence, it is a service "related to, but not necessary for, the provision of electric power and energy or delivery service."[138] ComEd described the existence of numerous entities, at least 14 in the Chicago area, that are "ready, willing and able" to provide electric vehicle charging services[139] and noted that "competition can be expected to be robust" in the electric vehicle charging services market, unless it is "stifled by the costs of regulation[.]"[140]

Given that Section 9-244(b)(5) of the PUA requires that the "implementation of the program is not likely to adversely affect the development of competitive markets," Staff would point out that the expertise ComEd gains through operating these charging stations[141] may give it a first-mover advantage that could adversely affect a potentially competitive EV charging station service provider market.

2. Request for Approval of Rate ACEP – Accelerated Customer Enhancements Pilot ("Rate ACEP") Tariff

Uncontested

The Company accepted and agreed to work with Staff to clarify the proposed tariff language for three issues raised by Staff which are addressed by six previous recommendations from Staff witness Hathhorn:

[136] See footnote 95.
[137] Staff Cross Ex. 1, pp. 7-8, 26-29, 32, 34, 43-44
[138] 220 ILCS 5/16-102; *See also* Staff Cross Ex. 1, p. 26
[139] Staff Cross Ex. 1, p. 34, fn 32
[140] Staff Cross Ex. 1, p. 34
[141] These 55 charging stations would be funded by customers of ComEd's *regulated* services, and potential competitors likely do not have access to this particular type of funding.

1) Add Language to Ensure Applicable Government Grants are Credited to Rate ACEP Recoveries (Staff Ex. 5.0, pp. 9-10, fifth recommendation, E)[142];

2) Require Biennial Report to be Filed on e-Docket and Other Biennial Reporting Review Changes (Staff Ex. 5.0, pp. 13-16, seventh, eighth, ninth, and tenth recommendations[143], G); and

3) Change “Approval of Recovery” to More Commonly Used Term of “Recoverable Costs” (Staff Ex. 5.0, pp. 16-17, eleventh recommendation, H). (ComEd Ex. 6.0, pp. 47-48; Staff Ex. 12.0, pp. 2-3)

Staff witness Hinman also recommended that ComEd include additional language in its Rate ACEP tariff to net any revenues against costs the Company would receive from implementation of the EV Pilot (or any other project under Rate ACEP). This is consistent with ComEd’s Rider AMP treatment of applying any payments it would receive for in-home devices as a reduction to costs recovered under Rider AMP. (ILL C.C. No. 10, 1st Revised Sheet No. 235) (Staff Ex. 9.0 Rev., pp. 17-18) The Company stated the recommendation was vague but agreed to work with Staff to address Staff’s concern, and that it was not ComEd’s intention to double recover costs. (ComEd Ex. 8.0, p. 22) Staff agrees that, if the Commission approves Rate ACEP, which Staff recommends it should not, Staff will work with the Company to develop tariff language to ensure any revenues the Company receives outside of Rate ACEP for any Rate

[142] Staff witness Hinman also recommended that ComEd make clear that it intends to revise Rate ACEP to ensure all investments and expenses under Rate ACEP associated with government grants or credits are credited to Rate ACEP recoveries. (Staff Ex. 9.0 Rev., p. 15) The Company agreed and made this clarification in its surrebuttal testimony. (ComEd Ex. 8.0, p. 22)

[143] Recommendation 7: Staff recommends the report the Company will prepare that summarizes the two year operations and audit results be filed on e-Docket under Docket No. 10-0527 rather than filed as an informational filing; Recommendation 8: Staff recommends the biennial review report quantify separately for each program the Investment Recovery Amounts, Expense Limiter Components, and Expense Cap Components related to the previous two year period. Recommendation 9: Staff recommends the report be accompanied by a verified statement of an officer of the Company regarding the reasonableness of the costs of the programs as compared to the Commission approved budgets; Recommendation 10: Staff recommends the Company file testimony with its petition to extend or modify the program, or if no such petition is filed, to file testimony describing whether the program is meeting its objectives in a proceeding initiated by the Commission to review the programs.

ACEP projects will be credited appropriately so that Rate ACEP does not double recover costs.

Contested

Eliminate "Approved Program Assessment" ("APA")

Staff witness Hathhorn recommends all references to APA be deleted from the proposed Rate ACEP tariff since including it at this time would be premature. APA is proposed to provide recovery of an Approved Program Plant ("APP") investment amount associated with an accelerated customer enhancement program that would have to be approved by the Commission in its Order in a future Biennial Review Proceeding, the first of which cannot be initiated until April 2013 under the Company's proposed tariffs in this proceeding. (Staff Group Cross Ex. 1, p. 59, Co. Response to Staff Data Request DLH-2.02) The evidence in the record shows that no existing or proposed programs or budgets at issue in the instant proceeding relates to APP. ComEd's proposed rates under Rate ACEP will be the same for the first two-year period whether or not factor APA remains a part of the tariff, since no APP is requested at this time. (Staff Group Cross Ex. 1, p. 61, Co. Response to Staff Data Request DLH-2.03) APA is a placeholder for an expected future event. If Rate ACEP is approved by the Commission, a Biennial Review Proceeding must be held and the merits of adding factor APA can be debated at that time. (Staff Ex. 5.0, p. 5)

The Company argues that it expects Rate ACEP to be in place without the need for future revisions to the tariff. (ComEd Ex. 6.0, p. 46) Staff disagrees. ComEd's expectation is unreasonable. It is proposing a pilot program, and the Biennial Review Proceeding integral to that pilot program could likely result in changes in the APA, as well as other terms, which would require tariff changes. While ComEd agrees with Staff that the APA component can be set to zero until actual costs arise, the fact remains that APA is a premature placeholder for the future. If Rate ACEP is approved by the Commission, a Biennial Review Proceeding must be held and the merits of adding factor APA can be debated at that time. (Staff Ex. 12.0, p. 3) Therefore, if the Commission approves Rate ACEP, it should adopt Staff's reasonable recommendation to simplify Rate ACEP by deleting all references to the APA.

Eliminate "Underground Regulatory Asset Amortization" ("UAA")

Staff witness Hathhorn recommends all references to UAA be deleted from the Rate ACEP tariff since including it at this time is premature. The UAA as proposed will provide recovery of a regulatory asset associated with the Underground Facility Reinvestment program. However, the Company admits that upon further investigation, it does not believe a regulatory asset is required for the underground cable and manholes. (Staff Group Cross Ex. 1, p. 57, Co. Response to Staff Data Request DLH-1.10) In other words, no budgeted amounts for underground regulatory assets are at issue in the instant proceeding. ComEd's proposed rates under Rate ACEP will be the same whether or not factor UAA remains in the tariff, since recovery of UAA amounts are not requested in this proceeding. ComEd's factor UAA unnecessarily complicates the Rate ACEP tariff. (Staff Ex. 5.0, p. 6)

The Company replied to Staff's recommendation with the same response to Staff's recommendation to eliminate all references to APA discussed above, i.e., generally that the component can be set to zero and that ComEd prefers to keep UAA in the tariff. (ComEd Ex. 6.0, p. 46) Again, ComEd's request to keep placeholder terms in its lengthy Rate ACEP tariff is unnecessary in light of the required Biennial Review Proceeding and the strong likelihood of resulting tariff changes from that proceeding. If the Commission approves Rate ACEP, it should adopt Staff's recommendation that all references to UAA be deleted from the proposed Rate ACEP tariff. (Staff Ex. 12, p. 4)

Eliminate Date "in accordance with Smart Grid Implementation Order"

Staff witness Hathhorn recommends all references to the "August 2012" date on ComEd Ex. 1.2, Original Sheet X + 3 be deleted since the date only represents when ComEd anticipates that a Smart Grid Implementation Order will be completed. (Staff Group Cross Ex. 1, p. 51, Co. Response to Staff Data Request DLH-1.05) The Smart Grid Implementation proceeding ("Policy Docket") has not yet been initiated; hence, it is too early to tell if and when an implementation order will be entered. It is inappropriate for the tariff to state the date as a fact certain when it is completely unknown at this point in time. Therefore, Staff recommends the following language change to Original Sheet X +3 should the Commission approve Rate ACEP:

> **Programs Approved in the Smart Grid Implementation Order**
> Beginning with the ~~August 2012~~ monthly billing period~~,~~ in accordance with the Smart Grid Implementation Order and the provisions of this tariff, the Company begins recovery (a) of and on the investment expenditures the Company incurs for smart meter-related facilities associated with the smart meter program approved by the ICC in such Order; (b) of the O&M expenses the Company incurs that are associated with such smart meter program approved by the ICC in such Order, reduced by 5%; (c) of and on the investment expenditures the Company incurs for distribution automation-related facilities associated with the distribution automation program approved by the ICC in such Order; and (d) of the O&M expenses the Company incurs that are associated with such distribution automation program approved by the ICC in such Order, reduced by 5%.
> (Staff Ex. 5, pp. 6-7)

The Company does not directly agree with Staff's recommendation, but instead states that it intends to honor the outcome of the Policy Docket and will base this date on the outcome of that docket. (ComEd Ex. 6.0, p. 47) ComEd's solution is impractical and illogical since, as discussed above, the Commission has not yet initiated the Policy

Docket. There is no way to predict the outcome or the schedule of the Policy Docket or of a Smart Grid Implementation Order even if the Policy Docket were to begin prior to the conclusion of this alternative regulation case. It is possible the Rate ACEP tariff could be approved prior to completion of a Policy Docket or a Smart Grid Implementation Order; therefore, ComEd's recommendation to refer to the outcome of the Policy Docket in the ACEP tariff does not follow the logical timeline of the two cases. If the Commission approves Rate ACEP, it should adopt Staff's language change noted above.

Revise Date When Unrecovered Plant Would Be Transferred To Rate Base

Staff recommends the date on ComEd Ex. 1.2, Original Sheet X + 20, be changed from December 31, 2013 to the effective date of Rate ACEP if approved in this proceeding. Under the tariff language as proposed, ComEd could file a general rate case and not transfer any unrecovered plant from Rate ACEP into rate base. (Staff Ex. 5.0, p. 8 and Attachment A) The Company prefers for Rate ACEP to "run its course." (ComEd Ex. 6.0, p. 47) ComEd's approach has two fatal flaws. First, it is contingent on findings of a "Smart Grid Implementation Order" that does not yet exist. Second, ComEd has not explained the benefit to the Commission, or ComEd's customers, for having cost incurrence and recovery continue through Rate ACEP even when a general rate proceeding is available for cost recovery. In discovery, ComEd declined to indicate whether approval of its proposed alternative regulation pilot will reduce the frequency, scope or size of the Company's future traditional rate case proceedings. (Staff Group Cross Ex. 1, p. 75, Co. Response to AG Data Request AG-1.03) Therefore, it is possible ComEd could file a general rate case prior to December 31, 2013. The Company has not sufficiently addressed why the unrecovered plant should not be transferred into base rates from Rate ACEP. If it is the Company's intention to never transfer the unrecovered plant to base rates and to continue to recover these costs solely through alternative regulation, it should make that position clear and justify it accordingly. (Staff Ex. 5, pp. 8-9) However, it has failed to do so. Moreover, the Company has never addressed why some unrecovered plant should be completely recovered through Rate ACEP, while other plant assets could be transferred to base rates, simply based on the timing of the next rate case. (Staff Ex. 12, p. 6) If the Commission approves Rate ACEP, Staff's recommendation to revise the date when unrecovered plant would be transferred to rate base should be adopted by the Commission.

Exclude Incentive Compensation Costs from Rate ACEP Cost Recovery

Staff witness Hathhorn recommends that incentive compensation costs be specifically excluded for cost recovery under Rate ACEP. The Company's proposed tariff language allows incentive compensation expense as a cost recoverable through Rate ACEP (Staff Group Cross Ex. 1, pp. 53-55, Co. Response to Staff Data Request DLH-1.09):

> Yes, the proposed tariff allows capitalized or operating and maintenance (O&M) incentive compensation costs to be included in amounts for cost recovery.[…] ComEd anticipates there will be incentive compensation costs associated with the Urban Underground Facility Reinvestment Program, the smart meter program, and the distribution automation program.

However, the Company's position ignores the fact that the Commission has ruled against including incentive compensation expense in non-traditional rate recovery mechanisms in the past. In Docket No. 09-0263, the Commission rejected ComEd's inclusion of incentive compensation expense in Rider AMP (Advanced Metering Program Adjustment):

> We agree with Staff's conclusion that the proper place for incentive compensation cost recovery is in a general rate case, not here. […] We also note that ComEd has presented no evidence establishing that it has any need to include incentive compensation in the pilot program here. (Order, Docket No. 09-0263, October 14, 2009, p. 32; Staff Ex. 5.0, p. 11)

The Company states only that it believes incentive compensation is a *bona fide* cost of doing business that is necessary to retain and attract talented employees. (ComEd Ex. 6.0, p. 47) The Commission made clear, however, that with respect to passing on costs of specific programs, such as in Rate ACEP, not all costs are eligible for recovery. The Commission did not base its rejection of incentive compensation expense from Rider AMP on whether or not the expense was a *bona fide* cost of doing business. (Staff Ex. 12, p. 7)

Allowing incentive compensation expense to be recovered through Rate ACEP would effectively guarantee prolonged contested proceedings in the Biennial Review Proceedings. Staff and other interested parties would have to review incentive compensation plans, review the targets and achievements and debate the proper recovery mechanism during each biennial review proceeding. (Staff Ex. 5.0, p. 12)

The Company's total estimated incentive compensation expense in the instant case of $249,600 is *de minimis* in comparison to the $45 million program for the UUFR Program. (Staff Group Cross Ex. 1, p. 65, Corrected Co. Response to Staff Data Request DLH-5.01; ComEd Ex. 1.0, p. 6) ComEd's only argument to receive recovery of incentive compensation expense in Rate ACEP is that it is a *bona fide* cost of doing business. (ComEd Ex. 6.0, p. 47) However, ComEd has failed to justify why a *de minimis* cost should be afforded special rate making treatment. (Staff Ex. 12.0, p. 8)

In addition, the Company has not demonstrated any financial reason why ratepayers must finance incentive compensation related to the UUFR Program or future smart grid and AMI investment through Rate ACEP. (Staff Ex. 5.0, p. 12 and Attachment C) ComEd's *bona fide* cost of doing business argument falls short once again. A cost could be a *bona fide* cost of doing business but not necessarily be a cost that ratepayers should finance through an alternative rate. The Commission previously indicated that utilities must provide evidence to establish why certain costs should be recoverable outside of a general rate case:

> We also note that ComEd has presented no evidence establishing that it has any need to include incentive compensation in the pilot program here. (Order, Docket No. 09-0263 October 14, 2009, p. 32; Staff Ex. 12, p. 8)

As in Docket 09-0263, the Company has not presented any evidence establishing why there is a need to include incentive compensation in its Rate ACEP pilot program.

For all of the foregoing reasons, if the Commission approves Rate ACEP, the Commission should adopt Staff's recommendation to deny recovery of incentive compensation expense through Rate ACEP. If the Commission determines it is appropriate for Rate ACEP to provide for cost recovery of incentive compensation expense, Staff recommends that the Final Order in this proceeding should be clear that such determination does not preempt the Commission's decision on the recoverability of ComEd's incentive compensation costs in a general rate proceeding. (Staff Ex. 12.0, p. 9)

B. Interaction with General Rate Case

V. OTHER ISSUES RAISED BY OTHER PARTIES

Policy Docket

ComEd witness Hemphill described the information that ComEd would provide in a future smart grid proposal. The information would include, among other things, a description of the technology, cost and benefit information, and a budget. This information would be based on guidance from the Commission as a result of the Smart Grid Policy Docket and could include filing requirements that are based on the recommendations from the ISSGC. (ComEd Ex. 1.0, p. 16) In response, Staff witness Schlaf noted that although the Commission has not yet opened the Policy Docket, the docket will presumably consider some of the issues discussed in the ISSGC, including the type and amount of information that utilities should file with smart grid proposals. Dr. Schlaf also noted that it is unclear to what extent policy decisions the Commission might make in the Policy Docket would apply to filings under Section 9-244, including any future smart grid proposals ComEd intends to offer subsequent to the conclusion of the Policy Docket. (Staff Ex. 3.0, pp. 8-9)

Additionally, Dr. Schlaf noted that ComEd does not state whether it believes it would be bound by any such policy decisions when it offers smart grid proposals under Section 9-244, or whether ComEd intends to file Section 9-244 smart grid proposals in conformance with the outcome of the Policy Docket. Dr. Schlaf explained his concern that the information that Dr. Hemphill states that ComEd will file with a future Section 9-244 smart grid proposal appears to fall short of the amount and type of information that many ISSGC participants concluded would be necessary to support a smart grid proposal. (Id.) Dr. Schlaf, therefore, recommended that the Commission state in its order that any future Section 9-244 filing in which ComEd seeks approval to commence smart grid projects that ComEd conform its proposal to meet any requirements, policies, or other guidelines that result from the Smart Grid Policy Docket. (Id.)

VI. CONCLUSION

WHEREFORE, for all of the following reasons, Staff respectfully requests that the Commission's order in this proceeding reflect all of Staff's recommendations regarding the Company's request for approval of an Alternative Rate Regulation Plan pursuant to Section 9-244 of the Public Utilities Act.

February 17, 2011

Respectfully submitted,

____

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